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CHEMICALS IN COMMERCE ACT

WEDNESDAY, MARCH 12, 2014

House of Representatives,

Subcommittee on Environment and the Economy

Committee on Energy and Commerce

Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2322 of the Rayburn House Office Building, Hon. John Shimkus [Chairman of the subcommittee] presiding.

Members present: Representatives Shimkus, Whitfield, Pitts, Murphy, Latta, Harper, Cassidy, McKinley, Bilirakis, Johnson, Upton (ex officio), Tonko, Pallone, Green, DeGette, Capps, McNerney, Barrow and Waxman (ex officio).

Staff present: Nick Abraham, Legislative Clerk;

Charlotte Baker, Press Secretary; Sean Bonyun, Communications Director; Jerry Couri, Sr. Environmental Policy Advisor; David McCarthy, Chief Counsel, Environment/Economy; Brandon Mooney, Prof. Staff Member; Chris Sarley, Policy Coordinator, Environment and Economy; Jacqueline Cohen, Democratic Senior Counsel; Greg Dotson, Democratic Staff Director, Energy and Environment; Caitlin Haberman, Democratic Policy Analyst; and Ryan Schmit, Democratic EPA Detailee.

Mr. {Shimkus.} I would like to call the hearing to order and welcome our guests. Obviously we have got a full committee room as there is interest in this, and I would like to start by recognizing myself for 5 minutes for an opening statement.

Over the past year we have participated in five hearings at which we have dug into TSCA, learning the issues section by section, and thinking about how we could make this law work better. In recent weeks we have had several conversations on the member level. We have exchanged thoughts on where we can find common ground. Our staffs have sat down on a bipartisan basis for many hours to discuss the language before us in the Chemicals in Commerce Act. Those conversations have helped us understand each other's perspectives much better. That work is continuing and I hope will help us as members to collaborate on a bill we can embrace going forward.

Today we give a wide variety of stakeholders the chance to weigh in. We will hear from big and small chemical makers and from those who use chemicals to make consumer products. We will hear from chemical distributors, labor unions, and other interested groups. Their testimony will show that making laws is a very dynamic process. I unveiled the

discussion draft because I think we need a collaborative process with diverse input.

That draft is likely to undergo changes as we work through the provisions to find consensus. If each member of this subcommittee sat down to write a TSCA bill, we would probably have 25 different versions, no two of which would look alike.

Our job is to craft a bill that reflects the best of all of us. So where might there be common ground?

So far, I think we agree that there are many chemicals already in the market that could use closer scrutiny by EPA. We need to be sure that EPA has the information it needs to decide on the safety of a chemical, but they should not delay action merely by asking for information that they don't really need.

We also agree that EPA should have the authority to impose requirements and restrictions on chemicals that pose risks, but those restrictions should be for the sake of improving the protection of human health and the environment, not simply for the sake of regulating.

We think that chemical manufacturers should be in a position to cooperate with EPA on its close scrutiny of their products, but they should still be able to protect confidential trade secrets in that process. Can we achieve

all that? I know our committee members on both sides are not only willing to try, they are already doing their best to get there and I appreciate their hard work and I promise that I will do all I can to make the results the best law we can enact for the American people.

[The prepared statement of Mr. Shimkus follows:]

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Mr. {Shimkus.} With that, I still have some time. Anyone on my side? If not, I will yield back my time and turn to my Ranking Member, Mr. Tonko from New York.

Mr. {Tonko.} Thank you, Mr. Chair. Today we will hear the views of a diverse panel of witnesses on the discussion draft of the Chemicals in Commerce Act released by Chair Shimkus at the end of February. Reforming the Toxic Substances Control Act is a very important task. Chemicals are the fundamental building blocks for every substance, either natural or human-made. Years of research, development and investment have provided us with the tremendous number of products we use each and every day. But due to weaknesses in TSCA, some of the chemicals we encounter in the environment each day are exposing us to harm, and the list of chemicals in commerce has grown far more rapidly than knowledge of their environmental, health and safety risks.

We are all familiar with the old adage, the dose makes the poison. The father of toxicology, Paracelsus, introduced this concept in the 1500s. Well, we have learned a lot since that time about the many factors that influence toxicity of any given substance, but we have not been acting on that knowledge, at least not with respect to industrial chemicals.

Since the early 1990s, we have known that infants and

children are more vulnerable to environmental exposures than adults, that the incidents of chronic diseases and other developmental disorders has increased and that we are being exposed to an increased variety and amount of chemicals in air, water, food and consumer products.

In 2000, the National Academy of Sciences attributed 28 percent of neurological disorders to environmental exposures. Studies of human tissues, first through the National Human Adipose Tissue Study in the 1980s and now for the Center for Disease Control's National Health and Nutrition Examination Survey, have revealed that our bodies are retaining a number of chemical substances as a result of environmental exposures. Evidence is mounting that we are not regulating chemicals sufficiently. The costs of this inadequate regulatory system are being borne by the public, at times the youngest members of the public. TSCA was intended to provide information on the health and safety of manufactured chemicals and to give the Environmental Protection Agency the authority to regulate chemicals that had the potential to harm human health or the environment.

Well, after 40 years, there has been very little regulation of chemicals under TSCA. We have insufficient health and safety information about many of the chemicals we encounter every day, and even when a chemical presents a

known serious risk, EPA has insufficient authority under TSCA to act to protect the public.

This situation must change. For older chemicals, we need to reduce the list of chemicals that are on a perpetual to-do list in terms of having basic health and safety information as a basis for informed decision-making. For newer chemicals we need a more robust review process that offers real assurance that new products are safe.

We need more than an information system or a regulatory system. We need a chemicals program that incentivizes innovation, good environmental stewardship and the integration of human health and sustainability in the product development process. In fact, I think these concepts are all included in the chemical industry's Responsible Care Program. Frankly, that is what consumers are seeking, products that they know are safe.

Finding the formula that will satisfy all stakeholders in this issue is a tall order. Mr. Chair, you have taken on a tough issue, one that is substantively complex and politically contentious. You are to be commended for starting down this road. I want to work with you and the other members of this committee. I believe other members of the minority are eager to participate constructively in this process also, and I thank you for providing us an opportunity

to engage in this effort.

These are early days. I understand staff members have had some good opening discussions. I am indeed encouraged. But the current draft does not yet strike the right balance or meet the needs of all stakeholders. I think my observation will be borne out by the range of testimony that we will hear today.

I am hopeful that with constructive input from the entire stakeholder community we can produce a bill that will define a robust, efficient and effective program for the regulation of industrial chemicals offered in our market. I believe if we work together, we can offer legislation that will serve the public and the industry well and that all the members of this committee will be proud to support.

Thank you, Mr. Chair, for calling this hearing, and to our distinguished panel of witnesses, thank you for appearing today and for offering your comments on what is a very important topic. Thank you. I yield back.

[The prepared statement of Mr. Tonko follows:]

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Mr. {Tonko.} I have a few seconds remaining--

Mr. {Shimkus.} You may.

Mr. {Tonko.} --if I could yield to Representative Green.

Mr. {Green.} Thank you, Ranking Member. I appreciate your time. I just want to like the ranking member, thank our chair for putting together the discussion draft. I just want to caution, though, this is not a sprint. This is a marathon, and there are a lot of issues. And I know we are going to have additional hearings over the next few months to do this because if we are going to really reform this law with everybody on board, it is going to take that effort.

And I just appreciate Chairman Shimkus in your effort to do it and look forward to continue working with you. The discussion draft is a work in progress, and I know our staffs have met and will continue to work together.

Mr. {Shimkus.} The gentleman yields back his time, and the chair thanks my colleagues for their kind words.

The chair now recognizes Chairman of the Full Committee, Mr. Upton, for 5 minutes.

The {Chairman}. Thank you, Mr. Chairman, and we do welcome all of our witnesses today, especially Jennifer Thomas of the Alliance of Automobile Manufacturers for taking

the time to join us from Brussels. So we know, Jennifer, that you are sharing our Buy America message with Europe, and we wish you very much success.

You know, today is an important milestone in our efforts to modernize current law regulating the management of U.S. chemicals, a law that has been on the books since 1976. The discussion draft before us, the Chemicals in Commerce Act, begins our committee conversation on how to craft reforms to our Nation's chemical regulatory system.

We have got two objectives, one, to increase public confidence in the safety of chemicals that are in U.S. markets, and to streamline commerce among states and with other countries to further our manufacturing renaissance.

Put simply, the Chemicals in Commerce Act is in fact a jobs bill. Why? Just put yourselves in the shoes of someone contemplating whether to invest in a new factory that produces or uses chemicals and what location maximizes opportunity. With options that span the globe, one would look critically at three factors to help in the decision, the cost and supply of feed stocks, especially oil and gas; availability of capable and reliable workers; and ease of market access.

Market access has two parts. First, is the buyer confidence in the product, the second is market rules free of

trade restrictions. The Chemicals in Commerce Act will improve confidence in chemical products because EPA will apply sound science to its safety determinations.

If EPA determines that a chemical does pose risks, EPA will detail those risks and will write a rule placing any necessary requirements or restrictions on it, which will apply in all 50 states. This will allow producers to operate in a seamless U.S. market.

So let us go back to the investor's decision. Access to oil and gas? The U.S. is looking pretty good. Reliable workforce? Our workers are the best and many are available right now. Market access? The Chemicals in Commerce Act completes the package, giving the United States green lights on all three factors.

We need to do all that we can to promote America's manufacturing sector and create the jobs that we want. This bill will help create those jobs not only in plants that manufacture chemicals but also in plants that use them to make cars, computer chips, and thousands of other goods.

So the bill is good news for jobs, the economy, and for a safer America. We need to roll up our sleeves and get it done. We need to work in a bipartisan basis. And my prediction is we can get to the finish line. We need to do it, and I appreciate the leadership of both sides as we begin

to move the ball down the field. And I yield back the balance of my time.

[The prepared statement of Mr. Upton follows:]

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Mr. {Shimkus.} The gentleman yields back his time. The chair now recognizes the ranking member of the Full Committee, Mr. Waxman, for 5 minutes.

Mr. {Waxman.} Thank you very much, Mr. Chairman. Today this subcommittee is examining a new proposal to amend the Toxic Substances Control Act. According to the National Cancer Institute, researchers have estimated that as many as two and three cases of cancer are linked to some environmental cause. Half of those are linked to tobacco and diet, but toxic chemicals are also an important factor.

The President's Cancer Panel found that reform of the Toxic Substances Control Act is critically needed to reduce the incidents and burden of cancer in this country. The Centers for Disease Control conducts biomonitoring in order to understand when chemicals end up in human bodies, and CDC has found that chemical exposures are ubiquitous. For example, according to the Center's most recent data, 75 percent of the people tested have the commonly used chemical, triclosan, in their bodies. That chemical has been shown to interfere with hormone levels in animals.

The CDC also found five different PBDEs in more than 60 percent of the participants. These chemicals have been linked to serious health concerns including rising autism

rates, and these chemicals are showing up in the bodies of Americans at levels 3 to 10 times higher than found in European populations.

This is an issue we must get right. Unfortunately, this bill would take us in the wrong direction. Letters of opposition have poured in. It has been called a ``gross disappointment'' and another quote, ``wish list tailored to ensure regulatory inaction.''

If enacted, this proposal would weaken current law and endanger public health. That is why I cannot support the bill in its current form.

For many years, the public health, labor and environmental communities have worked to improve EPA's ability to require testing of chemicals under TSCA. But this draft would restrict existing testing authority so that EPA could only require testing in the limited set of circumstances. On top of that, the Catch-22 of current law would remain. The Agency would be required to identify risk before being authorized to test for risk. This is the roadblock that has stymied the Agency for years.

When new chemicals are brought to market, the draft creates a new exemptions for industry and applies new procedural requirements to limit EPA action. For existing chemicals, the draft would arbitrarily limit what risks EPA

could consider in assessing safety. And for dangerous chemicals, EPA would be blocked from taking action unless alternatives are already available. On preemption, the draft goes well beyond even the Senate bill which has been rightfully criticized for preempting essential state level protections.

The current law is not working. The suffering and uncertainty we saw in West Virginia when hazardous chemicals spilled into the water supply has demonstrated the need for a more effective TSCA. That is why I want to work with Chairman Shimkus and Chairman Upton on TSCA reform. I am a realist. I know House Democrats can pass a TSCA bill without Republican support. But I also believe, Mr. Chairman, that House Republicans cannot enact a law without the support of House Democrats.

There is a lot of work that needs to be done to get a bill we can all support. But I am committed to making this effort. I hope we pay close attention to the testimony today and then renew our efforts to find common ground. And I would be pleased to yield time, yes, to Ms. DeGette.

[The prepared statement of Mr. Waxman follows:]

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Ms. {DeGette.} Thank you very much, Mr. Chairman. I just want to add my comments to those of all the people on our side of the aisle. Mr. Chairman, I want to thank you for introducing this discussion draft and then having hearings and discussions. It feels kind of fun to be back to regular order now, and I am happy about it. I am also happy that you have worked with a group of us on the other side of the aisle to really help do this.

I agree with the ranking member that this is a Herculean effort, one that we have tried for many decades now to revitalize and reauthorize TSCA in a way that makes sense from a scientific perspective.

I agree with many on this side of the aisle. This discussion draft is not perfect, but I am hoping that we can continue to work together in a bipartisan fashion to craft legislation that is really going to protect the health of the citizens of this country.

Thank you, Mr. Chairman, and thank you, Mr. Waxman, for yielding.

[The prepared statement of Ms. DeGette follows:]

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Mr. {Waxman.} Thank you. And Mr. Chairman, our TV screen shows a woman in a box with earphones on her head. Hi. How are you doing? I yield the balance of my time to her.

Mr. {Shimkus.} The chairman yields back his time. She will have her own time, Mr. Waxman. So I appreciate again my colleague's nice promise and just pledge to keep working. It is a draft, and I want to remind people and that is the purpose of this hearing is to get your comments to help us then go back and start working on this.

So we have a lot of individuals to testify. We have two panels, so we are going to get started and I will introduce your whole bio across the board first so everyone knows, and then I will direct your time specifically to you. You will have 5 minutes. There are a lot of folks here, so if you could keep to 5 minutes as close as possible, that would help us all. Then we will go to the question-and-answer period of time, and then we will get the second panel up.

So at the first panel we have Dr. Carol Duran, Director of the Chemical Risk and Compliance, Global Sourcing and Procurement with Intel Corporation. Also joining her is Ms. Connie DeFord, Director of Product Sustainability & Compliance of Dow Chemical Company. Mr. Barry Cik, Founder

of Naturepedic on behalf of the Companies for Safer Chemicals. We have Mr. Roger Harris, President of Producers Council on behalf of the National Chemical Distributors. Mr. Michael Belliveau, Executive Director, Environmental Health Strategy Centers and then the lady in the box, Ms. Jennifer Thomas, Director of Federal Government Affairs for the Alliance of Automobile Manufacturers. And just a side story, this hearing was originally scheduled for last week. We did postpone it at the request of my colleagues to give more time to go over the discussion draft. Ms. Thomas was scheduled to be here, and unfortunately she is in Brussels. So it is probably pretty late there. But that is why we are doing this over new technology.

So with that, I would like to ask Dr. Duran to give her opening statement. You are recognized for 5 minutes. Okay. Let us make sure the mike is on and pull it as close as you can to you.

Ms. {Duran.} Okay. Better?

Mr. {Shimkus.} That is better. Thank you.

Ms. {Duran.} Thank you.

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^STATEMENTS OF CAROLYN DURAN, DIRECTOR OF CHEMICAL RISK AND COMPLIANCE, GLOBAL SOURCING AND PROCUREMENT, INTEL CORPORATION; CONNIE DEFORD, DIRECTOR OF PRODUCT SUSTAINABILITY & COMPLIANCE, THE DOW CHEMICAL COMPANY; BARRY CIK, FOUNDER, NATUREPEDIC, ON BEHALF OF COMPANIES FOR SAFER CHEMICALS; ROGER HARRIS, PRESIDENT, PRODUCERS CHEMICAL ON BEHALF OF THE NATIONAL CHEMICAL DISTRIBUTORS ASSOCIATION; MICHAEL BELLIVEAU, EXECUTIVE DIRECTOR, ENVIRONMENTAL HEALTH STRATEGY CENTER; AND JENNIFER THOMAS, DIRECTOR, FEDERAL GOVERNMENT AFFAIRS, ALLIANCE OF AUTOMOBILE MANUFACTURERS.

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^STATEMENT OF CAROLYN DURAN

} Ms. {Duran.} Mr. Chairman and Ranking Member Tonko, thank you for the opportunity to testify on behalf of Intel. My name is Carolyn Duran, and I am responsible for supply chain regulatory risk mitigation for chemicals used in Intel's manufacturing technologies globally.

I appreciate your work to consider legislation to modernize the regulation of chemicals in commerce. Founded in 1968, Intel Corporation is the world's largest semiconductor company with net revenues in 2013 of $52.7 billion. Intel continues to invest in U.S. manufacturing

with over half of our roughly 100,000 person employee base residing in the United States.

Intel's latest manufacturing technologies are developed and implemented in Oregon and Arizona, and roughly 3/4 of our microprocessor manufacturing is domestic.

Since our inception, Intel has developed and implemented the revolutionary technologies necessary to achieve the transistor scaling known as Moore's Law resulting in the smaller, faster, more efficient electronics that drive today's economy. Advancements in chemistry and material science and an ability to experiment with novel materials in a timely fashion are key to these successes. As an example, our recent changes in transistor structures require the development of many novel materials, and we continue to research new materials and processes to develop the radical innovations necessary to deliver the integrated circuits that meet the needs of tomorrow.

Fundamentally, we believe that these advancements should go hand in hand with environmental sustainability. It is from this background that Intel supports chemical management approaches that enable environmental protection, safe use of chemicals and U.S. technology innovation. Additionally, Intel works closely with industry partners, including the Semiconductor Industry Association and the Chemical Users

Coalition. While I will share specific examples from my own experience, many of the concepts are also applicable to a wide range of industries that are downstream users of chemicals.

We are interested in chemical legislation through companies that supply us with chemicals and also as a downstream user or processor of chemicals. With regard to the former, the ability of our chemical suppliers to get new chemicals approved in a timely way, to ensure the continuity of supply, and to have intellectual property protected are all essential for Intel manufacturing competitiveness.

With respect to the latter, our processes are tightly controlled and perform to exacting standards. In order to ensure quality and consistency in the production process, chemicals used in semiconductor manufacturing is subject to significant and redundant controls and safety measures. Accordingly we appreciate a risk-based approached to chemicals management policy which will allow the continued safe use of innovative chemicals to produce leading-edge technologies.

We offer specific comments on the draft discussion in two areas, first, managing transitions to alternatives. When the EPA determines that a particular chemical is likely to result in an unreasonable risk of harm to human health or the

environment, we recognize that the EPA may decide to consider replacement of that chemical for particular uses. In this scenario, we appreciate an approach that allows downstream user companies to first develop a technically feasible alternative that can be demonstrated to be safer than the existing chemical and also allows for a reasonable implementation timeline.

In the interim, EPA can adopt appropriate measures for reducing exposure and mitigating the chemical's risk. The discussion draft includes these concepts in Section 6(f) and these are critically important for highly technical, complex manufacturing processes.

As an example, in 2006, the semiconductor industry announced a plan to end non-critical uses of perfluorooctyl sulfonates, or PFOS, in our manufacturing processes and to develop substitutes in critical applications. At the time the work began, PFOS was use pervasively throughout the industry. EPA provided the transition time necessary for us to develop and implement safer alternatives while maintaining product quality and technical requirements. This allowed Intel to successfully replace PFOS in over 300 discreet applications across 11 manufacturing technologies.

Second, articles. The treatment of articles under TSCA is important to Intel and many other industries that market

products in finished form that are classified as articles. Our products are comprised of many chemicals and materials used in extremely small volumes. These materials are typically bound in a monolithic fashion and cannot be separated from the devised and are not released to the environment during normal use. Accordingly, we believe the nature of the chemical and article should be taken into account in regulatory decision-making. Where there is minimal risk of release or consumer exposure, articles should be treated differently than in cases where this likelihood of exposure is high.

For this reason, Intel supports language in Sections 5 and 6 of the discussion draft that allows EPA to address chemical substances and specific articles when warranted, targeting situations where there is risk from exposure to the chemical in the article and where the risk cannot be managed through a focus on the chemical itself. This provides a valuable roadmap that will allow EPA to provide protection for health and the environment while also providing important predictability for the many industries that manufacture products considered articles in the context of TSCA.

We look forward to working with this subcommittee and the Congress as a whole as it continues its review of U.S. chemicals legislation. Thank you for the opportunity to

submit this testimony on behalf of Intel.

[The prepared statement of Ms. Duran follows:]

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Mr. {Shimkus.} Thank you. The Chair now recognizes Ms. Connie DeFord from the Dow Chemical Company. You are recognized for 5 minutes.

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^STATEMENT OF CONNIE DEFORD

} Ms. {DeFord.} Chairman Shimkus, Ranking Member Tonko and members of the subcommittee, I am pleased to testify today and offer comments on an issue that is critically important to the Dow Chemical Company, reforming of the Toxic Substances Control Act.

Reforming this important piece of legislation would allow for a more modernized regulatory process and a stronger and more effective federal program for the chemicals we manufacture. As the Global Director for Product Sustainability & Compliance for Down, I am responsible for ensuring that thousands of products that we put out on the marketplace are safe for our employees, our customers and the environment. On behalf of Dow, I am here to offer our support for the Chemicals in Commerce Act.

Dow is a leading global manufacturer of advanced materials. We supply customers in over 160 countries and really strive to connect chemistry and innovation with the principles of sustainability to help provide solutions, improve solutions, for everyday lives. Our diverse chemistry can be found in applications that range from food ingredients to electronics to water purification, alternative energy

including solar and wind and personal care products.

Dow is committed to sustainability. Our ambitious 2015 goals underscore this commitment along with our actions to ensure product safety. We also have product stewardship management systems in place to ensure that our products are safe for their intended uses.

As a global company, Dow strives to go beyond compliance with multiple regulatory programs across different countries. We have developed and adhere to our own high standards for product safety as well as voluntary industry initiatives like Responsible Care. Our policy is to comply with that highest standard of safety, whether regionally or our own, to ensure that each of our products are safe for their intended uses and ultimately for our customers and the environment.

In order to build upon our collective effort, we believe that the United States does need a stronger and more effective federal program to ensure that chemicals in commerce are safe for their intended uses. This is why we are in support of TSCA reform. Since 1976, the chemical industry has grown dramatically, and yet, TSCA has remained the same. Therefore, Dow supports a TSCA that creates a chemical management system that will be effective and efficient, not just now but long into the future. We believe reforming this outdated law will improve public confidence in

the safety of chemicals produced and used in our country, will encourage innovation and ultimately help create jobs and continue fueling America's manufacturing renaissance.

Overall, we would highlight a reformed TSCA should include the following. We believe it is critical that existing chemicals as well as new chemicals meet the safety standard. We think it is critical that there is objectivity and EPA's evaluation of safety using the best available scientific information. We believe EPA should be allowed to take actions that are both timely and effective. We think it is critical that the Agency is in a position to take timely decisions. Provide incentives for innovation and sustainable chemistry and enhance the U.S. competitiveness of companies manufacturing here.

We have evaluated the Chemicals in Commerce Act and feel strongly that this criterion has been met, and we agree with the approaches and recommendations. We have also concluded that it represents a significant step forward for our federal chemical management system and allows us to further support this vital piece of legislation.

Dow urges the subcommittee to move this bill forward so that the enactment of TSCA reform becomes a reality this year. By modernizing TSCA, we can foster public confidence on how chemicals are evaluated for safety in their

applications. We can help the United States maintain its competitive advantage as the global leader in innovation for manufactured products and provide certainty for business investment. We stand ready to assist Congress in its efforts so that we at Dow are able to ensure the benefits for society that can really be made possible through the science of chemistry. Thank you.

[The prepared statement of Ms. DeFord follows:]

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Mr. {Shimkus.} The gentlelady yields back her time. The chair now recognizes Mr. Barry Cik. Sir, you are recognized for 5 minutes. There is a button. Yeah, it is kind of hard to see.

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^STATEMENT OF BARRY CIK

} Mr. {Cik.} Got it. Thank you, Mr. Chairman and members of this subcommittee. My name is Barry A. Cik. I am a Board Certified Environmental Engineer, a Certified Hazardous Materials Manager, a Certified Diplomate Forensic Engineer, a State of Ohio Professional Engineer, and an author of a textbook for Government Institutes on Environmental Assessments. I am a co-founder of Naturepedic, a manufacturer of certified organic mattresses and bedding products for children and adult.

More importantly, I am here as a representative of the American Sustainable Business Council which includes the Companies For Safer Chemicals Coalition, a project of ASBC. The American Sustainable Business Council is a growing coalition of business organizations and businesses committed to advancing market solutions and policies to support a vibrant, just and sustainable economy. Founded in 2009, ASBC and its organizational members now represent more than 200,000 businesses and more than 325,000 business leaders across the United States. The Companies For Safer Chemicals Coalition represents a new alliance of companies focused on chemical reform based on the principles of transparency,

safety and innovation.

Forty years ago, when I was in engineering school, I was taught the solution to pollution is dilution. That was incorrect. I soon found out that Lake Erie, which is where I live close to, was dying. However, thanks to U.S. Congress, you passed RCRA. RCRA stopped the poor industry practices of disposing chemicals into the lake and many waterways across the country, of course. To this day, though, you cannot have any commercial fishing in Lake Erie because the mercury level is way too high. The price that we pay is too high.

A few years later, I realized, I observed where the gasoline companies were swearing that that can't make gas without lead. However, our environment was becoming contaminated with all that lead. Well, once again, U.S. Congress stepped into the picture and said no, you can't do this. And guess what? They stopped their crying and they made gas without lead, and our cars are doing just fine.

Eleven years ago, I walked into a baby store to buy a crib mattress for our first grandchild. What I encountered was vinyl with phthalate chemicals, antimony, perfluorinated compounds, flame retardants that included all kinds of really nasty stuff, pesticides, allergenic materials. I was shocked.

The moment of truth was when the salesperson told me,

come on, knock it off. If the product wasn't safe, the government wouldn't allow it to be sold. Well, I knew better. I decided there and then it was time for me to stand up and say no to toxic chemicals in consumer products. I decided to use the power of business to make a difference and, together with my two sons, we created Naturepedic, whose products are now sold by over 500 retailers across the nation.

On behalf of the American Sustainable Business Council, Companies for Safer Chemicals Coalition, and on behalf not only of my children and my grandchildren, but on behalf of your children and your grandchildren, I am asking you to do the right thing again, just like Congress did it in the past.

Our chemicals are, for the most part, are simply not regulated. Let us be honest, they are really not regulated. Industry reportedly produces about 250 pounds of chemicals every year for every man, woman, and child in this country, and there are over 80,000 chemicals available for industry to use, with very little regulation for any of it. This is not good for business.

Industry stopped polluting our lakes when the law, supported by science, told them to stop. Industry stopped adding lead to gasoline when the law, supported by science, told them to stop. We need a system-wide change now to tell

industry to stop using toxic chemicals in consumer products.

Many business leaders, myself--

Mr. {Shimkus.} Mr. Cik, your time is almost out, if you could wrap up.

Mr. {Cik.} All right.

Mr. {Shimkus.} I would be very generous in allowing you to keep going.

Mr. {Cik.} I will wrap up within 1 minute. We are asking--

Mr. {Shimkus.} Well, how about 30 seconds?

Mr. {Cik.} We are asking you to--

Mr. {Shimkus.} You already ran over.

Mr. {Cik.} Fine. We are asking you to restrict or eliminate toxic chemicals, incentivize the manufacture of safer chemicals, create the clarity needed in the marketplace, remove this unreasonable risk criteria which just doesn't work, hasn't worked ever. And you know it. Create some deadlines minimum requirements for identifying, assessing and regulating high-priority chemicals; disclose all ingredients to the public, provide health and toxicity testing, and avoid providing regrettable substitutes when changing ingredients.

Feel free to communicate with me or the American Sustainable Business Council. As well, we have given you

some written information. Thank you for your time and consideration.

[The prepared statement of Mr. Cik follows:]

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Mr. {Shimkus.} The gentleman's time expired. The chair now recognizes Mr. Roger Harris. You are recognized for 5 minutes. Welcome.

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^STATEMENT OF ROGER HARRIS

} Mr. {Harris.} Chairman Shimkus, good morning Ranking Member Tonko, and members of this subcommittee, I appreciate this opportunity to testify. My name is Roger Harris. I am President of Producers Chemical Company, and I am here today on behalf of the National Association of Chemical Distributors for which I currently serve as Chairman of the Board. NACD supports TSCA reform and believes the discussion draft is a significant step forward.

Producers Chemical is a small business located near Chicago that generates approximately $20 million in annual revenue and employs 25 workers which is an average-sized NACD member. Chemical distributors are a critical link in the industrial supply chain. The typical distributor buys chemicals in bulk, breaks them down into smaller packaging, in some cases blending them, and then delivers them to an estimated 750,000 industrial customers. Our customers turn these chemicals into products like paints and coatings, cosmetics, food and pharmaceuticals and numerous other products that are essential to our everyday lives.

NACD members make deliveries every 7 seconds while maintaining a safety record that is twice as good as all

manufacturing combined. NACD members are leaders in environment health, safety and security through implementation of NACD's Responsible Distribution program, a third-party verified management practice system established in 1991 as a condition of membership. We would welcome the opportunity to discuss with you why we take Responsible Distribution so seriously.

I will briefly discuss several issues in my written remarks to make clear we support the draft's approach and spend the rest of my time on the testing and reporting provisions which, with some very important clarifications, would also be positive steps forward.

By allowing states to regulate chemicals until EPA has taken action and making clear that citizens may still have their day in court if they have suffered damages because of another's actions, the draft's preemption provision strikes the right balance and improves on the Senate version. Likewise, the draft protects confidential business information which is critical to innovation and competitive markets while ensuring emergency responders and doctors have access to lifesaving information.

The draft also creates a 1-year guidance deadline that will prod EPA to action and prioritizes chemicals as high or low to focus EPA's resources on substances of the highest

concern.

We also have some suggestions. Under the existing statute, the EPA has been limited in its ability to order testing of chemicals and mixtures. Under Section 4 in the draft EPA is given significantly enhanced authority to require testing. That authority is guided by Section 4(b) requiring the Administrator to issue a Statement of Need. We fully anticipate EPA's primary focus would appropriately be on chemicals in commercial, not the millions of mixtures.

Nevertheless, we recommend that the introduced bill specifically clarify Section 4(b) so that if the Administrator were to require testing of a mixture, she explain her Statement of Need why testing only the chemicals comprising the mixture, rather than the mixture itself, is either infeasible or provides insufficient information.

This would keep the focus on the chemicals of concern rather than on millions of mixtures, reduce unneeded testing and would place no additional hindrance on EPA in carrying out this section.

NACD strongly supports a risk-based approach to chemical management, which means EPA needs information not only about hazards but exposures under chemicals and intended conditions of use. Currently manufacturers and importers are required to provide that but often do not know the end uses of the

products. We agree with the testimony in your last TSCA hearing that to accomplish the aim of a risk-based regulatory scheme the law should expressly allow the Agency to collect necessary use-related information from downstream processors who are formulators of consumer and industrial products. At the same time, reporting obligations should not simply be shifted to distributors who do not manufacture the end-use products but are simply the middleman in the chemical supply chain for thousands of products. But the draft is unclear on its requirements. We recommend clarifying that EPA has the authority to require the information from downstream processors who are formulators of consumer and commercial products but also explicitly state EPA should minimize duplicative reporting under this section. Downstream formulators have the best understanding of how they use the chemicals they buy from us.

Requiring upstream distributors to report who have sometimes thousands of different industrial customers would generate massive amounts of paperwork and get little useful information for the EPA. If duplicative reporting were required of our companies, which average 26 employees, we estimate that more of a third of the overall reporting burden would fall on our sector alone.

Lastly, current law does not define small processor.

While not a significant issue under existing law, it will become extremely important for small business in numerous industry sectors under expanded reporting provisions. That definition should reflect the normal definitions of a small business as outlined by the Small Business Administration.

Thank you very much for your time and attention.

[The prepared statement of Mr. Harris follows:]

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Mr. {Shimkus.} Thank you. And now I would like to recognize Mr. Michael Belliveau. You are recognized for 5 minutes.

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^STATEMENT OF MICHAEL BELLIVEAU

} Mr. {Belliveau.} Thank you, Mr. Chairman, Ranking Member Tonko--

Mr. {Shimkus.} Again, yeah. Let us make sure that the mike is--

Mr. {Belliveau.} There we go. The green light is on.

Mr. {Shimkus.} Just check our transcriber. If he is happy, everybody is happy.

Mr. {Belliveau.} Chairman Shimkus, Ranking Member Tonko, members of the committee, thank you for this opportunity to testify today. My name is Mike Belliveau. I am the Executive Director of the Environmental Health Strategy Center, a public health organization, and serve as senior advisor to Safer Chemicals, Healthy Families, a national coalition.

I appreciate the efforts of this committee to work for TSCA reform. I have spent many hours over the last decade working toward the same goal, and it is worthy of achieving. Unfortunately, the Chemicals in Commerce Act as drafted, like its Senate counterpart, would endanger public health. In its quest for meaningful TSCA reform, the discussion draft takes two steps forward but 12 steps backwards. Those 12

fundamental problems with the draft legislation are detailed in my written testimony. They include rollbacks in existing TSCA authority, retention of fatal flaws in current TSCA and aggressive overreach that would chill other needed protections.

Now, let me illustrate just a few of the worst features of this bill draft by way of example. Imagine your family at home after a long day. Your kids or your grandchildren are jumping up and down on the couch. Your pregnant daughter or niece plops down and curls up to rest on the couch, very normal activities, each of which sends a puff of invisible dust into the air that is laden with flame-retardant chemicals that come from the couch. Those chemicals can be measured in the bodies of your family members, and scientists have shown that those chemicals disrupt thyroid hormones and can harm the developing brain.

Now, the House draft fails to protect those vulnerable populations including pregnant women and children. It requires that when a safety determination is made that such groups be considered but does not explicitly require that the chemical be found to be safe for those vulnerable populations. Consideration is not enough. Protection of the health of pregnant women and children should not be optional. It should be mandatory.

Now, coming back to couches, Dr. Heather Stapleton, a chemistry professor at Duke University, has analyzed the flame-retardant chemicals added to couch cushions. Based on her research, your couch falls into one of two groups based on its age. If you bought the couch more than 10 years ago, it likely contains Penta, one of the PBDE flame retardants. These chemicals don't break down in the environment. Now, the House bill retains TSCA's flawed, unreasonable risk standard and includes the same onerous or similar onerous burdens in current TSCA that prevented EPA from banning asbestos. Applied to Penta 10 years ago, EPA would not have been able to restrict this flame-retardant chemical in couches for the same reason.

The House bill would also roll back existing authority to regulate chemicals in consumer products like couches. It makes it more difficult to regulate significant new uses of chemicals. This is in direct response to EPA's proposed actions on the chemical cousin of Penta known as Deca. It also would prevent and take away EPA's authority to regulate the disposal of old couches, even though they likely pose significant risks of health.

The bill also violates states' rights from day one of enactment of the law. More than 1,600 chemicals would be taken off the table. States would be preempted immediately.

It would get worse over time. States would not be able to collect information on flame retardants and chemicals.

Now, if you have one of the newer couches, it contains some other chemicals that have not been adequately tested, including a new chemical that EPA let into the market mistakenly called TBB. Under the House draft, it would make it easier for hazardous new chemicals to enter into the market, and it would make it more difficult to require testing of those chemicals or their effects over the environment and public health. Similarly, it would maintain grandfathered confidential claims without justification.

Now, I have spent over the last 4 years or so more than 1,000 hours sitting across the table with chemical manufacturers, including Ms. DeFord, including flame-retardant manufacturers, including consumer product manufacturers, including big box retailers, all discussing our common interest in TSCA reform. Unfortunately, this draft bill does not reflect that dialogue. It will not restore consumer confidence in the safety of chemicals in everyday products. Just the opposite. The bill in fact is far outside the mainstream of the chemical management policies in place today in major U.S. corporations, in many states, among our trading partners and internationally. This unfortunately can't be considered a serious starting point

for meaningful TSCA reform.

The good news is that like other stakeholders, we are ready to roll up our sleeves and develop a consensus approach that is feasible that would protect public health and the environment, and we look forward to the opportunity to work with you toward that end. Thank you, Mr. Chairman.

[The prepared statement of Mr. Belliveau follows:]

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Mr. {Shimkus.} And I thank you. Now, last but not least, Ms. Jennifer Thomas, Director of Federal Government Affairs. She is the lady in the box. We appreciate your patience, and you are recognized for 5 minutes.

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^STATEMENT OF JENNIFER THOMAS

} Ms. {Thomas.} Thank you, Chairman Shimkus, Ranking Member Tonko and members of the subcommittee. I have a feeling that when I return to Washington, my new nickname is going to be Woman in the Box.

But my name is Jennifer Thomas, and I am the Director of Government Affairs for the Alliance of Automobile Manufacturers which is a trade association that represents 12 automakers that make roughly three out of every four new vehicles sold in the U.S. each year. Please accept my utmost apologies for not being there in person this morning, but I, as you know by now, I am currently in Brussels working on another four-letter acronym that begins with a T, TTIP, which is the Transatlantic Trade and Investment Partnership. And like TSCA, TTIP is a key priority for auto makers, and specifically, we are advocating for an agreement that aligns U.S. and E.U. automotive safety standards. So our objective here in Brussels is consistent with what auto makers hope to achieve through TSCA reform back home, a clear and consistent set of rules for manufacturers that protects the health and safety of all our customers. The Alliance appreciates the thoughtful and thorough approach the committee has taken on

this important issue. We commend Chairman Shimkus for releasing a discussion draft that is a very good start to address the issues that were raised over the last year. We understand that the chairman has asked for input and that we are at an early stage in this process. We pledge to be a constructive partner and look forward to working with the subcommittee and other stakeholders as we move forward.

The draft Chemicals in Commerce Act recognizes the needs for a single, national regulatory program for comprehensively managing chemicals in commerce. We realize that inaction at the federal level has created a situation in which states feel compelled to regulate chemicals on their own, creating a patchwork of state standards. But in many cases, states simply do not have the adequate resources to implement their own chemical regulatory programs.

Additionally, conflicting and inconsistent state regulatory programs present insurmountable obstacles to effective chemical management for large industry sectors, in particular, manufacturers of complex durable goods like automobiles. Auto makers design and build vehicles to meet an array of customer needs and demands and to comply with thousands of pages of federal emissions and safety standards.

As a practical matter, auto makers simply cannot manufacture vehicle on a state-by-state basis. We believe

the approach taken in this draft is more in line with today's manufacturing realities. The draft preserves the state's ability to take action on a chemical if the state believes that there is a risk present that has not yet been addressed by EPA, and we believe that is entirely appropriate. But once EPA has taken action on a chemical substance, this decision should be viewed as the law of the land.

The Alliance also supports the manner in which this discussion draft seeks to regulate chemicals and articles. This discussion draft will allow EPA to target chemical substances in articles where the risk to health and environment cannot be addressed by placing restrictions on the chemical itself. This approach recognizes the challenges of regulating chemical substances and--products. The average automobile has 30,000 unique components, and each individual component is made up of multiple chemicals and mixtures. Most automotive components are obtained from suppliers of finished products and are integrated into the vehicle. Regulating the construction and the assembly of automobiles on a component-by-component basis is burdensome, inefficient and most importantly unnecessary to effectively manage chemical substances.

But we understand that there may be circumstances where EPA must prevent significant risk of exposure by issuing

restrictions on chemicals in articles. In these instances, the draft proposes a reasonable process for identifying suitable alternatives and should allow sufficient lead time to implement any substitutions.

Additionally, we strongly believe that automotive replacement parts should be exempt from any TSCA requirements. In this regard, we urge the subcommittee to consider a full outright exemption for replacement parts rather than the narrow exemption for those parts manufactured prior to the compliance date which is proposed in this discussion draft. Such an exemption would avoid creating unnecessary disruptions to the supply of older model replacement parts, impacting the ability to fulfill consumer warranties, recalls and repairs of the existing fleet. This is a significant issue considering that the average age of a vehicle on U.S. roads today is more than 11 years old.

We appreciate the opportunity to offer our views on the draft Chemicals in Commerce Act. We stand ready to work with the subcommittee as this draft moves through the legislative process. Again, my apologies for not being there in person, and I thank you and I would be happy to answer any of your questions.

[The prepared statement of Ms. Thomas follows:]

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Mr. {Shimkus.} Thank you very much, and we have done this a couple times. And even though the time lag on the photo was a little disturbing, we heard you loud and clear.

So I am going to start, recognize myself for 5 minutes and start with you, Jennifer, because of the compelling testimony on U.S. manufacturing, the automobile sector, which is always credited as being one of our major manufacturing, showing sign of growth. American-made cars compete here in the U.S. against products made as far away as Asia and Europe. Isn't price a big factor in that competition?

Ms. {Thomas.} Oh, absolutely, 100 percent.

Mr. {Shimkus.} And to compete on price, you have to be efficient. Is that correct?

Ms. {Thomas.} Yes, sir.

Mr. {Shimkus.} And isn't inefficiency hampered if you can't predict government regulations or if regulations change from state to state?

Ms. {Thomas.} Absolutely, yes.

Mr. {Shimkus.} And that is all part of this debate of what we are trying to raise. The first panel's testimony is very compelling, and it is trying to strike that balance. And I would just remind everyone, this is a draft. You would be angrier if it was a bill.

Mr. Harris, are you saying you don't think you should ever report use and exposure information or just not when a downstream formulator is already reporting?

Mr. {Harris.} That is--no, I am not saying we should never report, exactly what you said. We are a distributor for middlemen. We buy from manufacturers, we repack them, we resell. Our customers are varied and in many sorts of industries. We have an idea as a part of our responsibility under Responsible Distribution to understand what they are making with those products that we sell them, that they are being used responsibly. We don't always know and generally don't know how they are using them. So it is more appropriate for a downstream processor to be the one that actually reports on the actual hazard and exposure information of each of the chemicals that they are using.

Mr. {Shimkus.} Yeah, I appreciate the testimony. I have been trying to deal with this issue of when you report, when you don't report.

Mr. {Harris.} Right.

Mr. {Shimkus.} When things are transported as a distinct entity or when they are maybe mixed in before the transportation. And it is a difficult challenge. I would encourage you to keep working--

Mr. {Harris.} Yeah, and we certainly are not opposed to

reporting if that information is not available anywhere else.

Mr. {Shimkus.} And Dr. Duran, you support the discussion draft's tailored treatment of articles? And you mentioned that in your opening statement. Another part of this debate is the finished product or the articles that go on. Can you elaborate a little bit more on the tailored treatment of articles?

Ms. {Duran.} So I think it goes in line with what you were saying. When the finished product, in our case an integrated circuit, when it itself is not exposed to the public or has no risk of the chemicals used in that product getting into the public use, we would like the restrictions to be in line with that use, whereas in the description over here with the couch, for example, where the exposure is quite obvious, then the restrictions and regulations around that particular use of the same chemical would be in line with that exposure.

Mr. {Shimkus.} And Ms. DeFord, on your discussion on the net benefits and alternatives and new and burdensome requirement for the EPA, you know, the Obama administration has already done executive orders in line with trying to say that there should be an evaluation of, of our understanding, that they should, you know, an evaluation of net benefits and alternatives. Do you agree?

Ms. {DeFord.} Absolutely. We see the Agency doing that today. I mean, most recently is their implementation of their TSCA work plan chemical approach. They really are focusing in on those applications, those areas representing greatest potential for exposure, setting aside areas where there is minimal and less potential benefit and considering the economic aspects as well.

Mr. {Shimkus.} And to follow up to you, Ms. DeFord, how will the discussion draft change the practices of your company when it comes to assessing chemical risk?

Ms. {DeFord.} As I noted in my testimony, Dow prides itself on having a really strong program, but we think the greatest opportunity is to have greater collaboration with the Agency, so also to be able to be in a position to share more of what we are doing with other stakeholders that are interested. Questions are out there about information that is available, and we see this discussion draft as an opportunity to share more.

Mr. {Shimkus.} Can you also follow up on advances in science and technology and how that would impact this debate?

Ms. {DeFord.} You know, as noted by several of us today--

Mr. {Shimkus.} I think your mike--

Ms. {DeFord.} Sorry. As noted by several of us today,

chemistry is at the building block of any innovative products. And so it is critical that any policy allows that free flow of innovation. Certainly it needs to be in a controlled manner, and we support the need for management of that. But we certainly need to be mindful of in order to get--we know much more today than we did 20 years ago as we were developing materials. And so we need to have the opportunity to get those chemistries, those chemicals out there to support the innovative products that are going to keep the United States competitive.

Mr. {Shimkus.} Thank you very much. The chair now recognizes the Ranking Member Mr. Tonko for 5 minutes.

Mr. {Tonko.} Thank you, Mr. Chair. We need TSCA reform because of the public's systematic exposures to industrial chemicals without sufficient safeguards to protect public health. With that in mind, Mr. Cik, your story drives this concern home. I share your instincts to do everything as a subcommittee and committee and Congress to protect our children and grandchildren.

When you went to purchase a crib mattress and saw that the available products contained phthalates, brominated flame retardants and other chemicals, alarm bells went off. What were some of the adverse health effects you were concerned about that could be caused by exposure to those compounds?

Mr. {Cik.} I learned not to talk medicine. I once testified in court and tried that, and they beat me up because I am not a doctor. I am an environmental engineer. However, that said, the information in the literature is pretty clear. As a matter of fact, if you will allow me, I have something here that I will quote. This is not from any tree-huggers or environmental extremists. This is going to be from the American Academy of Pediatrics, your regular, everyday pediatricians. I have a few quotes for you if you permit me. The American Academy of Pediatrics recommends that chemical management policy in the United States be revised to protect children. It is widely recognized to have been--this is from TSCA. It is widely recognized to have been ineffective in protecting children. The growing body of research indicates potential harm to child health from a range of chemical substances. There is widespread human exposure to many of these substances. These chemicals are found throughout the tissues and body fluids of children. Manufacturers of chemicals are not required to test chemicals before they are marketed, and I am going to just add to it, they are in baby products. They are everywhere.

Continuing, concerns about chemicals are permitted to be kept from the public. Those who propose to market a chemical must be mandated to provide evidence that the product has

been tested. Okay? That is not me. That is the American Academy of Pediatrics. They are everyday pediatricians. I agree with everything here. The literature is full of information.

Mr. {Tonko.} Okay. And might I ask if we could have that admitted--

Mr. {Cik.} Absolutely.

Mr. {Tonko.} --into the record. What role do state regulations, including consumer product laws and labeling requirements, have in informing consumers to choose safer alternatives?

Mr. {Cik.} Look, the fact of the matter is we have to stop using toxic chemicals in consumer products. If you are not going to do it, the states are going to do it. You can't deny the problem. And if you try to stop the states, you are just going to have some serious public issues, all right? Do not try this preemption thing. The states have the right to regulate their land and their air and their water and the chemicals used in whatever they need to regulate within their states. Please do not try to stop that.

Mr. {Tonko.} Thank you. My home State of New York has taken action to address several dangerous chemicals, and I would be concerned about any proposal that wiped out those protections.

Mr. Belliveau, you have worked at the state level to get consumer protections put in place, is that correct?

Mr. {Belliveau.} Yes.

Mr. {Tonko.} And can you describe some of the important state protections that would be preempted by this draft?

Mr. {Belliveau.} Yes, and they are very complementary to federal actions. For example, two states require reporting of chemicals in everyday products. This is information that EPA does not have. Two other states require product manufacturers to assess the availability of safer alternatives. This is also information EPA does not have. The House bill would preempt both of those information collection requirements. In fact, tomorrow the State of California is going announce its first product chemical priorities under its new state program which would be preempted if EPA took action on chemicals under the House draft.

Lastly, some states also require warnings of exposure. This is authority that EPA also does not exercise. So state regulation of chemicals is essential and complementary, and like other environmental statutes, there should be a partnership between the state and Federal Government.

Mr. {Tonko.} I think both of you gentlemen are highlighting one of the problems with the draft legislation.

Under this proposal, a new chemical can be brought to market with no accompanying health and safety information. If it is a new chemical, is it likely that there would be studies available to enable EPA to assess potential health and safety problems within 90 days?

Mr. {Belliveau.} Well, today under TSCA, the new chemicals program is touted as relatively more successful, even though fewer than 15 percent of new chemicals have adequate health and safety data when they are allowed to enter commerce. Yet, even with that record, the House draft would roll back authority to review new chemicals. It would raise the bar by making it harder to require testing of new chemicals. It would take away important authority that EPA has currently to require consent orders that impose conditions on new chemicals, making it more difficult to take those actions. So it goes backwards in the wrong direction.

Mr. {Tonko.} Mr. Chair, I see my 5 minutes are exhausted so I yield back.

Mr. {Shimkus.} The gentleman yields back his time. And the chair now recognizes the gentleman from West Virginia for 5 minutes, Mr. McKinley.

Mr. {McKinley.} Mr. Chairman, is Ms. Thomas still available?

Mr. {Shimkus.} I have no idea.

Mr. {McKinley.} There she is.

Mr. {Shimkus.} Oh, there she is.

Mr. {McKinley.} The lady in the box. Now we lost her again.

Mr. {Shimkus.} No, I think she can hear you.

Mr. {McKinley.} We know that they are using less and less steel in our automobiles, and my area we have lost two major steel manufacturers to foreign steel. So I am curious about how much of the U.S. steel, American-made steel, not something that we have rolled that has come from Brazil or Japan, but how much is American steel in use in automobiles today? Do you have an idea of that?

Ms. {Thomas.} Thank you for the question, Congressman. I believe the estimate is at 25 to 30 percent of U.S. steel is currently being used in automotive applications.

Mr. {McKinley.} And do you concur that we are using less and less steel in our automobiles today?

Ms. {Thomas.} Yes, because of the stringent fuel economy standards, we are having to light weight motor vehicles. So you have seen a trend towards more aluminum being used.

Mr. {McKinley.} So what you are saying is, if I heard her correctly, was only about--of the steel that is used, 75 percent of it is coming in from off-shore and only 25 percent

is American made, is that correct?

Ms. {Thomas.} No, I don't think that is the correct figure. I believe that of the U.S. steel usage in the United States, 25 percent goes to automotive applications.

Mr. {McKinley.} Okay. I was just wondering how much steel in an automobile goes into it, but maybe I can take some percentages from that. So there are approximately, what, 8 million steel workers nationwide or 8 million workers dependent on the automobile. What percent would that be, of steel workers would be affected by this? Do you have an idea?

Ms. {Thomas.} I am not sure of the correct percentage, the exact percentage, Congressman, but of the 8 million jobs that are tied to the auto industry, there are certainly--

Mr. {McKinley.} Quite a few of them?

Ms. {Thomas.} --more than a handful that are steel workers, yes. And I can work to get that exact figure for you.

Mr. {McKinley.} I would appreciate that. Are you there promoting the global market accessibility for cars made in America or just what--can you share what your goal is in Europe today?

Ms. {Thomas.} I would be happy to. So we are advocating for a strong regulatory convergence package in the

transatlantic agreement in order to streamline and harmonize the United States' and E.U. safety regulations.

Mr. {McKinley.} As a result of that, are you hearing from anyone there or what is the issue with chemical safety laws in the United States? Does it affect at all the marketability of our products overseas?

Ms. {Thomas.} You know, I haven't spoken to anyone here directly on that issue, but I would say that the issue of multiple inconsistent state laws would certainly impact--would become a global issue because it diverts valuable resources from research and development of advanced technologies and safety technologies away from those technologies, more toward regulatory compliance.

Mr. {McKinley.} There was testimony about replacement parts. Do you have thoughts about--have you been able to hear all the testimony?

Ms. {Thomas.} Yes, I have.

Mr. {McKinley.} Does the tracking system that has been discussed, does that all include replacement parts as well?

Ms. {Thomas.} The tracking system that the auto industry has worked with--auto makers have worked with our suppliers to create that tracks all substances that go into our motor vehicles.

Mr. {McKinley.} Do you agree with the testimony that

has been presented so far on this?

Ms. {Thomas.} Well, the replacement part issue is certainly very important to our industry because of the very large existing fleet on the roads. And we need to be able to continue to service them. As I mentioned in my statement, the average car on the road is more than 11 years old. So it is a real issue, and just grandfathering in already manufactured replacement parts as this discussion doesn't quite go far enough. And we would like to see a total exemption for automotive replacement parts.

Mr. {McKinley.} Okay. Thank you very much. My time has run out. But thank you for your testimony. Thank you.

Mr. {Shimkus.} The gentleman's time--

Ms. {Thomas.} Thank you.

Mr. {Shimkus.} --expired. The chair now recognizes the gentleman from Texas, Mr. Green, for 5 minutes.

Mr. {Green.} Thank you, Mr. Chairman, and as I said earlier, I want to thank you for holding the hearing on the Chemicals in Commerce Act discussion draft. And thank you and the witnesses for being with us today.

We are likely today--the TSCA reform is a contentious issue, and toxic chemicals and how they are regulated touches millions of Americans from the industries who make the chemicals to the workers in the plants and the retailers,

consumers and communities that live there. That speaks why TSCA hasn't been reauthorized for 4 decades. Nevertheless, we have had a number of hearings in our committee, and we are moving an effort down the road to do something.

But let me first ask a question of every witness. Yes or no, should TSCA safety standard be based solely on health? Ms. Duran? Dr. Duran?

Mr. {Shimkus.} Microphones, please remember. And Gene, can you pull yours a little bit closer to you, too?

Mr. {Green.} Okay.

Ms. {Duran.} So I would say no, we would also need to look at exposure, not--

Mr. {Green.} Okay.

Ms. {Duran.} --an inherent hazard but exposure as well.

Mr. {Green.} I will amend my question then. Should it be based solely on health and exposure?

Ms. {DeFord.} Yes, a safety assessment should be.

Mr. {Cik.} According to the National Academy of Science and the American Academy Pediatrics, the focus of TSCA needs to change, needs to focus--instead of biological mechanisms of effects, it needs to focus on the toxic effects. And it also needs to provide for an aggregate assessment of all pathways of chemical exposures that go along--

Mr. {Green.} I just need a yes or no. I only have 5

minutes. I don't need to hear that if you--

Mr. {Cik.} Well, that was--

Mr. {Green.} Could it be based on--

Mr. {Cik.} That was my--

Mr. {Green.} --health or should it be based on health exposure, bottom line?

Mr. {Cik.} Based on--yes. Yes. The answer is yes.

Mr. {Harris.} Yes, sir, I would agree with that.

Mr. {Belliveau.} Yes, sir.

Mr. {Green.} Okay. One of the questions I have, and I know there is some concerns about access to the civil justice system that complements I think chemical regulation. Is it imperative that TSCA reform also ensure that an additional layer of accountability and public safety is protected, people being able to go to the civil justice system? Any or all can answer.

Mr. {Belliveau.} Yes, sir, those rights should be protected.

Mr. {Green.} Okay. One of the questions I had, and I might ask it of the next panel, because the draft raises the question if a substance is designated as a low priority by EPA and then several years later scientific study comes out that shows that substance may be hazardous to human health, and again, based on exposure, should the EPA have the

authority to consider new information and authority to go back and recategorize the substance? Now again, we are talking about scientific data, not in--you know, that is peer reviewed, not something that somebody decides they want to have a result on. Should EPA be able to go back and visit those, those low-priority chemicals?

Ms. {Duran.} I would say yes. If there is new information that says the risk that was currently determined is incorrect, then certainly they should be able to reopen the discussion.

Mr. {Green.} Okay.

Ms. {DeFord.} Absolutely. If there is new information, they need to assess it.

Mr. {Green.} Mr. Cik?

Mr. {Cik.} My understanding is that the current draft had some limitations on using new information. So my recommendation would be that the new information should apply to all chemicals, not just certain listed chemicals which as my understanding would be restricted right now. So yes, of course EPA has to be able to go back for everything.

Mr. {Green.} Okay. Mr. Harris?

Mr. {Harris.} Yes, I would agree with that. I would think if there is new information available that is scientific information based on risk and exposure that it

should be allowed to be revisited.

Mr. {Green.} Okay.

Mr. {Belliveau.} Yes. May I just say the EPA needs the authority up front to make sure they have adequate data before they designate a substance as low priority.

Mr. {Green.} Well, and one of our concerns is sometimes EPA takes a long time to make a decision. And so I know we have to do resources there to make sure those decisions can be made in a reasonable amount of time.

Let me--I have a minute left I think. Ms. DeFord, I am glad to see Dow Chemical testifying today because a lot of my constituents work at the Dow Chemical plant in Deer Park and a great corporate citizen. For my question, is Dow Chemical supportive of government incentives for investments in sustainable chemistry?

Ms. {DeFord.} Absolutely. We think it is key.

Mr. {Green.} Would Dow like to see TSCA to incentivize industry to develop more sustainable chemicals?

Ms. {DeFord.} Yeah. I mean, we think the discussion draft goes that direction with the attention around new chemicals. We think there are other opportunities for inclusion.

Mr. {Green.} What information do you believe manufacturers should provide the EPA in order to make an

accurate prioritization of the decision?

Ms. {DeFord.} I think the manufacturers need to provide all the information they have relative to hazards to human health and the environment as well as how the applications that they are used and what kind of exposure results from those applications.

Mr. {Green.} Should EPA have the authority to consider all information, scientific numeric studies by academia, government industries regardless of the funding source?

Ms. {DeFord.} They should look at all sources, but they need to consider the weight of the evidence as they are doing their evaluations.

Mr. {Green.} Because that is a balancing act. That is what we get from a regulator, ultimately a court of law.

Ms. {DeFord.} Absolutely.

Mr. {Shimkus.} Gentleman's time--

Mr. {Green.} Chairman, I know I am out of time.

Mr. {Shimkus.} You are.

Mr. {Green.} Thank you for your time.

Mr. {Shimkus.} The gentleman yields back his time. The chair now recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. {Johnson.} Thank you, Mr. Chairman. I appreciate the panel being here to speak with us today. Ms. DeFord,

continuing with you, your written testimony comments that chemistry is such an enabling science that a poorly designed policy can impact the competitiveness of business through the entire chain of commerce. Could you elaborate on that, tell us what you mean?

Ms. {DeFord.} Well, if you look at it first from a new chemical standpoint, if the new chemical process is delayed, then it is preventing our customers' customers. Sometimes we are four or five steps removed from that product that our consumers use. And so we need to get that new chemistry out there that is based on the science understanding today. So that is a key aspect.

For existing chemicals, the other part of it is there is great confidence there is lots of information out there on existing chemicals that people don't understand, and we see treatment and certainty around existing chemicals to be critical.

Mr. {Johnson.} In layman's terms, you know, we talk about a resurgence of manufacturing. Am I understanding what you are saying correctly, if we don't do this part of it right and if we don't get new chemicals out there in a timely manner, responsibly, then it really affects the entire commerce chain, right? I mean, you have got manufacturers that are waiting on those chemicals. They are waiting for

that as a raw material, perhaps in development in other innovations. Is that what you are talking about?

Ms. {DeFord.} Absolutely. Essentially everything that we touch starts from a chemical building block.

Mr. {Johnson.} All right. Good. Ms. DeFord, are the CBI projections afforded under CICA an improvement over current TSCA and if so, why?

Ms. {DeFord.} We think they are because they provide greater clarity than what is in existing TSCA. And I think it provides more information. It gives stakeholders an increased confidence that that those elements that we are protecting are deserving of being protected.

Mr. {Johnson.} Okay. All right. And you know, some people have argued that making EPA look at the benefits and alternatives in a new and burdensome requirement is a new and burdensome requirement to the EPA, yet you state that these matters are supposed to be routine for EPA under both Clinton and Obama administration executive orders. So in your experience does the EPA apply the intent and the requirement of those executive orders when implementing current TSCA?

Ms. {DeFord.} Yes, we believe they are. We think the discussion draft will provide further opportunities for the Agency to apply those executive orders.

Mr. {Johnson.} Okay. All right. Mr. Chairman, those

are all the questions I have. I will be proud to relinquish my time.

Mr. {Shimkus.} The gentleman yields back his time. The chair will now recognize the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. {Waxman.} Thank you very much, Mr. Chairman. When this discussion draft was first released to the public, I indicated I couldn't support it in its current form. But I am open to working to improve it. Now 2 weeks later we haven't made much progress, and the purpose as you indicated of this hearing is to highlight some of the issues in this proposal that some of us feel might be flaws that need to be corrected.

Mr. Belliveau, I would like to ask whether this draft is stronger or weaker than current law on a number of points. Is this draft stronger or weaker than current law in terms of EPA's ability to require testing of chemicals?

Mr. {Belliveau.} It is weaker.

Mr. {Waxman.} In terms of EPA's ability to assess risk, including risks from all uses of chemicals, stronger or weaker?

Mr. {Belliveau.} It is weaker than it needs to be. Existing law is a little vague on that policy.

Mr. {Waxman.} So existing law needs to be clarified?

Mr. {Belliveau.} Correct.

Mr. {Waxman.} Is it stronger or weaker in terms of EPA's ability to manage risk and actually regulate chemicals?

Mr. {Belliveau.} It is equivalently burdensome and onerous to current law.

Mr. {Waxman.} And what would you change in that regard?

Mr. {Belliveau.} In that respect, the burden needs to shift some to the industry. EPA needs to make a clear and clean safety determination based strictly on health. If a chemical fails to meet a safety standard, the burden needs to be in significant part on the industry to demonstrate why a potential solution may be too expensive or too technically difficult. The current draft puts all the burden on EPA, which would delay action.

Mr. {Waxman.} Is this draft stronger or weaker in terms of requiring an adequate review of new chemicals?

Mr. {Belliveau.} It is weaker.

Mr. {Waxman.} How about on regulating articles?

Mr. {Belliveau.} It is weaker.

Mr. {Waxman.} How about in how it provides for the sharing of information that ought to be in the public domain?

Mr. {Belliveau.} It is weaker.

Mr. {Waxman.} Weaker? Hearing that, it should be no surprise to anyone that we have received so many letters of

opposition to this draft. Hundreds of businesses, public health groups, unions and environmental groups have announced their opposition to this proposal. But the industry is supportive of this draft, and to some extent I think that support is because the proposal would preempt state and local laws.

So in order to better understand that perspective, I would like to turn to our industry witnesses. Mr. Harris, can you identify for the record a specific state or local law that you believe is important that Congress preempt?

Mr. {Harris.} Well, I guess first of all, I look at preemption in this regard as similar to what the hazardous materials regulations are under the Department of Transportation. We ship product all over the country. If we had different regulations in every state that we went into, it would be impossible to operate. I see the same thing here. You know, we don't sell into California--

Mr. {Waxman.} Well, that is theoretical. Are there any specific laws that you think we ought to preempt because they interfere with interstate commerce?

Mr. {Harris.} Not that I can think of right off the top of my head, no, sir

Mr. {Waxman.} You can't think of a single one?

Mr. {Harris.} Not off the top of my head I cannot.

Mr. {Waxman.} Mr. Belliveau, what do you think about that? If he is unable to identify a specific law, that is troublesome. Why should we preempt?

Mr. {Belliveau.} We shouldn't, Mr. Waxman. There have been no demonstrated impairment of interstate commerce, no undue economic impact on industry that will justify overturning more than 100 state laws that have been enacted in the last decade to regulate toxic chemicals.

Mr. {Waxman.} Ms. DeFord or Dr. Duran, do you have any--can you identify a specific law that needs to be preempted?

Ms. {Duran.} It didn't say we are looking for specific laws to be preempted but rather to drive consistency. So if the EPA takes action that addresses the concern of the specific state, applying nationally will then prevent minor modifications across state lines and easier for us to comply. So we are looking from a consistency perspective.

Mr. {Waxman.} So are you looking prospectively or is there some law that you think ought to be preempted now?

Ms. {Duran.} More future looking.

Mr. {Waxman.} Uh-huh. Ms. DeFord?

Ms. {DeFord.} The laws out there today require reporting and--I mean, they are focused a lot on reporting. They are focused also on those materials that have been proven safe by other regulatory agencies. So again, I would

look at we are looking forward to the potential for such laws to have an impact on flow of interstate commerce compared to where we are today.

Mr. {Waxman.} But the draft preempts all existing laws. So what are the existing laws that are troublesome?

Ms. {DeFord.} Okay. Our understanding is that the preemption would occur at a point when the Agency has made a determination as to whether or not that material meets the safety standard. So that is our understanding.

Mr. {Waxman.} Yeah, well, I can see preempting future laws but preempting existing laws that can't be identified as troublesome as a problem.

TSCA reform represents an opportunity to strengthen protections for human health and the environment. I fear this bill would undermine what protections currently exist, and as we undertake this effort, I hope we can focus on the real problems with the law and not be sidetracked with hypothetical problems. And Mr. Chairman, I hope we can work together to improve this draft and make progress toward a bill that can garner support from a wide range of stakeholders and members on both sides of the aisle. My time has expired. Thank you.

Mr. {Shimkus.} I thank my colleague. The chair now recognizes the gentleman from Florida, Mr. Bilirakis, for 5

minutes.

Mr. {Bilirakis.} Thank you very much and thank you for your testimony. First question for Dr. Duran, some people support a regulatory system based largely upon hazards. If exposure were not part of the regulatory determination, what would that mean for Intel and its ability to produce cutting-edge components? Thank you, for Dr. Duran.

Ms. {Duran.} In some cases it could mean that we wouldn't--the pool of new chemicals and materials that we need to drive innovation would simply not be available to us. They would be restricted in any use and not allow for that innovation that we need to develop it for our products and our technologies if used in a safe and responsible manner. So exposure is critical to us.

Mr. {Bilirakis.} Thank you. Second question for Dr. Duran, CICA, the bill, provides that when EPA issues a new rule to restrict a chemical--pardon me, I have laryngitis--that it takes into account whether technically feasible alternatives would be available. It also provides for a reasonable transition timeline for implementation. Can you elaborate on that? Does this provision discourage innovation in your opinion?

Ms. {Duran.} In this case I would say no. We used the example of PFOS in my oral and written testimony to say in

some cases that can actually drive further innovation as long as we are given the capability and time to find that alternative. And in that case we work with chemical manufacturers on those innovations.

Mr. {Bilirakis.} What would be the typical lead time to develop and deploy an alternative chemical if one's use is restricted?

Ms. {Duran.} There are no generic timelines. As Ms. DeFord had said, many cases in the early development of a chemical we do look at alternatives that are available and are picking the one that meets technical needs with the lowest hazard profile. So the opportunity for a drop in replacement to be readily available is pretty much nil. So in the case of PFOS, it took over 10 years. For another case where it might be a single application and innovation has happened in parallel, it may be much shorter than that. But PFOS was over 10 years.

Mr. {Bilirakis.} Okay. Next question for Dr. Duran. Does the draft TSCA provide the flexibility for manufacturers to transition to alternatives when a chemical is banned? If not, what improvements would you recommend to allow such flexibility?

Ms. {Duran.} We believe the draft as written does provide for that opportunity for us to pursue alternatives

and then transition them into our existing manufacturing processes.

Mr. {Bilirakis.} Thank you very much. I yield back--

Mr. {Shimkus.} Will the gentleman yield to me?

Mr. {Bilirakis.} Yes, I will.

Mr. {Shimkus.} A question for the panel. This is the Energy and Commerce Committee. And historically, do you know how we got our evolution as a committee? Dr. Duran?

Ms. {Duran.} I do not, no.

Mr. {Shimkus.} Ms. DeFord? Mr. Cik?

Mr. {Cik.} Never been here. I have no clue.

Mr. {Harris.} No, sir, I do not.

Mr. {Shimkus.} All right.

Mr. {Belliveau.} No, sir.

Mr. {Shimkus.} Okay. Well, as the new Constitution that we passed, states were close to fighting states. Part of the new Constitution that we are under today was the Interstate Commerce Clause with the sole purpose of making sure that states wouldn't block commerce flowing from state to state. So I would pose that as part of this debate. If you understand the history of this country and the union that we now are under and the federal system that we have, it is based upon the national government incentivizing and supporting interstate commerce.

So I know my friends who will claim states' rights will make a proclamation of the indignation, but I would say historically, if you would look at the founding of this country, that the Interstate Commerce Clause is really the foundational principle that has unified these states, and I think allowing this whole preemption debate is Constitutionally pretty clear that we have the authority to do that.

And I thank my colleague for yielding his time, and I yield back. And I would now recognize my colleague from New Jersey, Mr. Pallone, for 5 minutes.

Mr. {Pallone.} Thank you, Mr. Chairman. I am pleased the committee has convened this legislative hearing, and I wanted to, you know, commend you for your efforts to address the severe flaws in the underlying TSCA statute. We all share a common goal, to ensure that the chemicals in everyday products that Americans use are safe.

But let me first say that I have some serious concerns with the Chemicals in Commerce Act discussion draft. I believe that Sections 5 and 6 need changes to ensure the proper review of new and existing chemicals. And I won't get into all my concerns, but I also hope to see greater protections for vulnerable populations and a refined preemption scheme.

But again, I don't see these concerns as insurmountable. I remain confident that both sides of the aisle can come together to craft a bipartisan bill that achieves our common goal of protecting Americans from dangerous chemicals.

Now, let me ask--TSCA requires that when EPA needs to regulate a chemical it must use the least burdensome option, and this least burdensome requirement is widely recognized as one of the biggest obstacles to effective implementation of TSCA. Since EPA's failed attempt to regulate asbestos and the Corrosion Proof Fittings decision, EPA has been saddled with performing time and resource-intensive cost-benefit analysis on every potential alternative, not just the final regulatory control option selected. The draft removes the language least burdensome but it replaces this with a number of troubling similar terms like proportional to the risk, net benefits and cost-effective compared to alternatives.

I wanted to ask Mr. Belliveau, in your assessment, do these terms preserve the substance of the least burdensome requirement?

Mr. {Belliveau.} Yes, they do. I believe they are equivalent in their impact.

Mr. {Pallone.} And how will these changes affect EPA's ability to protect the public from substances known to be dangerous, like asbestos?

Mr. {Belliveau.} Well, they will perpetuate a deficiency in which EPA was not able to ban asbestos, even though it kills 10,000 Americans per year. The same equivalent factors are preserved in the new draft.

Mr. {Pallone.} Now, under the net benefits language, the proposal says that EPA should not regulate unless the action would result in net benefits. This appears to say that if preventing exposure to a toxic chemical will cost a company $10 million and the reduced exposure would only prevent childhood illnesses valued at $8 million, then EPA can't take the action. Does that seem ethically--well, it seems ethically wrong to me. What do you think about it?

Mr. {Belliveau.} Well, I think it is further troubling in that there are not adequate data usually to quantify the health benefits, and we need to be mindful of the burden that it places on the Agency, burdens that should be placed on the industry.

Mr. {Pallone.} The bill also creates a new requirement barring EPA from restricting a chemical's use unless there is an alternative currently available for that use without additional cost. And without that requirement, EPA restrictions on dangerous chemicals could provide market opportunities for innovation and safer alternatives. But do you have concerns about that requirement as well?

Mr. {Belliveau.} Yes, I have very strong concerns, I think, as should any business person because what the act draft requires is that we substitute EPA's judgment for a business judgment as to what may constitute a safer alternative. Do we really believe that the Environmental Protection Agency can determine whether a particular substitute works for Intel or not? No, Intel is equipped to determine that. That is an impossible burden on EPA to achieve.

Mr. {Pallone.} All right. Let me move to Mr. Cik. How would that provision affect companies like yours that innovate safer alternatives?

Mr. {Cik.} It would level the playing field certainly for small businesses, and leveling the playing field where everybody has to work by the same rules drives innovation. That is good for business if you level the playing field, and that is what we need to do is level the playing field. Nobody can put toxic chemicals in their products. Period. It will drive innovation and is good for business.

Mr. {Pallone.} I appreciate that. Yeah, I am just concerned, Mr. Chairman, that these burdensome requirements have the potential to create what Jim Jones called paralysis by analysis and to protect the market position of dangerous chemicals and articles, and I think they should be removed

from the draft to enable the EPA to act and to encourage innovation.

Again, I do appreciate, Mr. Chairman, your efforts to draft--you know, to move forward. And I think that if we continue to work, we can come up with a consensus on this bill. But I do have some serious concerns about the draft right now. Thank you.

Mr. {Shimkus.} I thank my colleague. The chair now recognizes the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. {Harper.} Thank you, Mr. Chairman, and thank you for holding this hearing, and we appreciate each witness being here today to share your views and insight. I think that will be very helpful as we go forward.

Mr. {Shimkus.} Would the gentleman yield for a second?

Mr. {Harper.} Yes.

Mr. {Shimkus.} Just a reminder because she is not up on the screen, but we also have Jennifer Thomas from the Alliance for Automobile Manufacturers. She is in Brussels. So there she is.

Mr. {Harper.} Great.

Mr. {Shimkus.} So if there is--sometimes people come and go, and they forget that she is here and we appreciate her time.

Mr. {Harper.} Great. Thank you. Mr. Harris, if I may ask you a couple of questions, first, can you talk for a moment about why it makes more sense to keep the focus on chemicals instead of mixtures?

Mr. {Harris.} Most of the mixtures that would--and there are millions of mixtures, understand. There are not just a few thousand. There are millions of mixtures. If the chemicals that go into those, unless they in some way through reaction or some other catalyst change the makeup of that chemical, if the chemical has been evaluated, it seems duplicative to me to do it again, extra effort on the part of the industry but extra effort on the part of the EPA as well and integrate information that I see as having little use.

Mr. {Harper.} Mr. Harris, the small processor is not defined in TSCA. How do you define small business in your sector?

Mr. {Harris.} Employees of 100 or less is the typical definition under the bill. Otherwise, anyone with sales over $4 million or sales of 100,000 pounds would not be included as a small processor.

Mr. {Harper.} You state in your written testimony that protection of proprietary information is the foundation of innovation in our economy and that it is important to your members and your customers. In your opinion, are the

confidential business information provisions in CICA an improvement over existing TSCA and if so, why?

Mr. {Harris.} Yes, I believe so. I think it gives industry the opportunity to keep information confidential that they need to for competitive and innovative reasons, but I think it also provides an opportunity for those emergency responders and those in healthcare to be able to get the information they need if necessary in event of an accident. I think it is an improvement over current TSCA.

Mr. {Harper.} You make an important point in your written testimony about the economic margins your industry operates on and while you believe that your members should be subject to regulation that it is important to be mindful of the costs associated with regulatory burdens. Along those lines, isn't cost-benefit analysis an essential part of most government regulation?

Mr. {Harris.} I certainly think it should be. In our industry, we are regulated by just about every agency that you could name here in Washington, and I think it is essential that when a regulation is created, you need to understand what it is going to cost industry to comply to make sure that it makes any sense, that there is a benefit not only to the industry but certainly to the general public.

Mr. {Harper.} Okay, and if there wasn't such a cost-

benefit requirement, couldn't the government impose regulations whose costs far exceed the benefits they are purported to provide?

Mr. {Harris.} Absolutely. I think that happens today.

Mr. {Harper.} Specifically you mention reporting burdens that may be especially burdensome for your members, and you explained that you want to avoid duplicate reporting burdens. How could EPA be sure it is getting the information it needs and not more and not duplicate information?

Mr. {Harris.} Well, I think that we are, speaking as a distributor, we are a middleman. We do not manufacture products. The chemicals that we distribute are manufactured by others. That information the EPA is getting from those manufacturers. We sell products to manufacturers, companies that are making a variety of products. They understand the exposure. They understand the risk better than we would. If that information can't be obtained anywhere else, we are certainly willing to do what we can to provide it. But it seems duplicative to me to provide information that someone else has already provided and a burden on both industry and the government.

Mr. {Harper.} Thank you, Mr. Harris. I yield back.

Mr. {Shimkus.} The gentleman yields back his time. The chair now recognizes the gentlelady from Colorado, Ms.

DeGette, for 5 minutes.

Ms. {DeGette.} Thank you. Thank you very much, Mr. Chairman. I just want to reiterate that I am pleased that we are continuing to have conversations, and there is some progress that is made in this draft bill. But I am concerned like the ranking member of the Full Committee that the discussion draft might weaken some aspects of current law. And I want to talk about a couple of those issues.

Right now, TSCA doesn't require new chemicals to be tested before they are introduced into commerce, and it places significant hurdles on the EPA to require testing of existing chemicals. And so as a result of this, 85 percent of pre-manufacture notices submitted for new chemicals under TSCA are accompanied by no toxicity data. This bill, the draft bill, doesn't require new chemical applications to be accompanied by data, and it would not require testing of all existing chemicals. While the draft does extend order authority of the EPA for testing, it also puts new limits on the EPA's testing authority, allowing testing in only a narrow set of circumstances.

And so I want to start with you, Mr. Belliveau. Are you concerned about the limitations the draft would put on the EPA's authority to require testing?

Mr. {Belliveau.} Yes, I am very concerned for the

reasons that you stated and in addition, the changes in the draft to current law would substantially shrink the universe of the number of chemicals that would be candidates for testing. Currently under existing law, any chemical could be subject to a testing requirement. Under the draft, only those handful of chemicals that were going through a safety determination or determination for a new chemical could be tested. That really shrinks the universe and the bar is raised, a higher--rather than a chemical simply that may present an unreasonable risk triggering testing, now EPA has to show that the chemical will result or will likely result in an unreasonable risk before testing can be required.

Ms. {DeGette.} Right, and that sort of hints at what my next question is which is that EPA is not provided with the requirement of--I am sorry, with the authority to require the testing of chemicals before putting them into the high-priority or low-priority categories. The chemicals that were put into the low-priority category would be exempt from all regulation at both the federal and state levels. So that would have huge consequences.

So I want to follow up and ask you are there any requirements in the draft to ensure that the EPA has adequate information about a chemical's risk before putting it into that category?

Mr. {Belliveau.} No, because their authority has been narrowed as we just discussed.

Ms. {DeGette.} Right.

Mr. {Belliveau.} And there is no threshold requirement that there be robust data demonstrating that the chemical has no intrinsic hazard in order to justify being designated a low priority. The result would be thousands of chemicals that are shielded from federal and state--

Ms. {DeGette.} Okay. Do you have--

Mr. {Belliveau.} --scrutiny.

Ms. {DeGette.} --some ideas of how we can fix this part of the draft? You don't--

Mr. {Belliveau.} Yes.

Ms. {DeGette.} --need to tell me right now, but if you don't mind supplementing your testimony by providing a written summary of how you would fix this as we move forward in the committee?

Mr. {Belliveau.} I would be happy to do that.

Ms. {DeGette.} That would be great. Thank you. Mr. Chairman, I would ask unanimous consent that he be allowed to supplement with that information.

Mr. {Shimkus.} Without objection, so ordered.

Ms. {DeGette.} Thank you. I want to turn to you, Mr. Harris, briefly. Why do you think that the bill should be

changed to give the EPA the authority to require from downstream formulators, that are from downstream formulators? Sorry. That was written in my handwriting which I couldn't read.

Mr. {Harris.} No problem. I have the same issue. Again, I will repeat that, you know, we are a middleman. We are a distributor. We typically know but under Responsible Distribution and the product distributorship requirements that we have under Responsible Distribution, we know what our customers are using their products for.

Ms. {DeGette.} Right.

Mr. {Harris.} We do not always know exactly how they are using them. Thus it would be difficult for us as a distributor to determine what the exposures would be in their factors and in their plants. In fact, many of our customers would not want us in their factories, their plants. They have confidential things that they do there. They don't want us to know how they are formulating their paint or their ink or their cosmetics. So I think it would be duplicative for us to try to do something and provide information that in fact probably wouldn't say much because we don't know what is going on every day in a downstream processor's facility.

Ms. {DeGette.} And so really, if those folks gave the data to the EPA, then the EPA could use that to inform the

prioritization, right?

Mr. {Harris.} Absolutely.

Ms. {DeGette.} Dr. Duran, you are nodding your head yes, too, is that correct?

Ms. {Duran.} Yes. I mean, understanding where the exposure is, that is a role we play as downstream users of chemicals and--

Ms. {DeGette.} And in fact, high exposure is a valid reason to designate a chemical as a high priority, isn't it, Dr. Duran?

Ms. {Duran.} In conjunction with inherent hazard, of course.

Ms. {DeGette.} Right.

Ms. {Duran.} Yes.

Ms. {DeGette.} Thank you. Thank you very much, Mr. Chairman.

Mr. {Shimkus.} I thank my colleague. The chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. {McNerney.} Well, I thank the chairman for getting this train moving down the tracks. I am just afraid that it will get going too fast. It is really possible for the House to pass something that wouldn't have a chance in the Senate. So let us work together on that.

And I understand the industry's need for TSCA's reform to establish a clear and consistent set of standards that would not impact the industry's competitiveness clear enough. However, there is a growing public concern and awareness of unapproved exposure to chemicals that may cause cancer or cause harm to other parts of our health. And a good reform package would give the EPA the tools and the resources to carry out regulations of public disclosures of chemicals to better ensure public safety. If this committee produces legislation that curtails the EPA from protecting the public safety from a chemical exposure, then this legislation would be a failure and ultimately counterproductive for the industry. So again, I urge we work together. There is competitive interest, of course, but in the end, I think we can find something that would be beneficial.

I do have some questions. I am not just going to preach here. The CICA continues to determine on a cost-benefit analysis rather than a risk-based standard, and yet every member of the panel agreed that the law should be risk-based. So I suspect we should move more in that direction in our legislative effort with the concurrence of the panel. The CICA fails to create protections from aggregate exposures to chemicals which is something that concerns me personally. Mr. Belliveau, would you comment on that?

Mr. {Belliveau.} Yes, we need to consider real-world conditions. The average person is exposed to a chemical from multiple sources. Naturally EPA should aggregate the information on those multiple exposures when determining the safety of chemicals and a more explicit requirement to assess aggregate exposure would certainly be appropriate.

Mr. {McNerney.} Should the EPA generate risk data on chemicals?

Mr. {Belliveau.} The EPA needs greater authority to require manufacturers and processes to test chemicals to provide data and information on--

Mr. {McNerney.} So it should--

Mr. {Belliveau.} --the hazards. Yeah.

Mr. {McNerney.} --have a risk-based table or database of chemicals of risks?

Mr. {Belliveau.} If you are asking do we need a strictly risk-based system, yes, we do, and the draft does not provide that.

Mr. {McNerney.} So that was my next question.

Mr. {Belliveau.} Okay.

Mr. {McNerney.} Does the CICA do that?

Mr. {Belliveau.} No.

Mr. {McNerney.} Does it give the EPA authority to do that?

Mr. {Belliveau.} No, it mixes costs too up front in the process which prohibited EPA from banning asbestos. There needs to be--and I think stakeholders have agreed on this privately that there needs to be a strictly health-based determination as to whether a chemical is safe for the uses, all the uses that are out there. And then if a chemical fails to meet that safety standard, then we can look at solutions next. And then naturally, as a common-sense matter in looking at solutions, you look at what works, how affordable it is, and other considerations. But to consider those things up front chills a determination of safety.

Mr. {McNerney.} I am not sure if anyone on the panel would like to answer this. It seems that the CICA creates new opportunities for litigation before chemicals can be regulated. Would anyone care to take that?

Mr. {Belliveau.} If I may, in several places the draft adds new burdens of proof imposed on the Environmental Protection Agency. Arguably that opens the door to industry lawsuits that allege that the EPA has not met those burdens. There needs to be more of a burden on the industry to make certain demonstrations and less burden on EPA.

Mr. {McNerney.} Lastly, the TSCA reform proposals included in this draft would create new duties and new requirements for the agency, necessitating additional funds.

Yet, this draft provides no additional resources. For each to the panel, a yes or a no, please. Do you support the collection of reasonable user fees to ensure that the EPA has the resources to carry out its functions? Dr. Duran?

Ms. {Duran.} I would say reasonable is key. Most likely, yes.

Ms. {DeFord.} Reasonable in making sure that they come back to TSCA to EPA, that office to--

Mr. {McNerney.} Very good.

Ms. {DeFord.} --have those resources.

Mr. {Cik.} Absolutely, of course.

Mr. {McNerney.} Okay.

Mr. {Cik.} We submitted some data with our package that demonstrates that most small businesses in the country support very strong measures to control toxic chemicals. This position is not a minority position. This is a majority position.

Mr. {McNerney.} Okay. Mr. Harris?

Mr. {Harris.} Yeah, I would agree also if it is reasonable, if the fees are reasonable, and if the funds are used for the purpose intended.

Mr. {McNerney.} Okay.

Mr. {Belliveau.} Yes.

Mr. {McNerney.} Well, I want to underscore this before

I yield. No matter what we put in the bill, if the EPA doesn't have the resources to carry out its functions, it won't be a functional law. I yield back.

Mr. {Shimkus.} The gentleman yields back. At this time the chair now recognizes the gentlelady from California, Ms. Capps, for 5 minutes.

Mrs. {Capps.} Thank you, Mr. Chairman, for holding the hearing, and thank you to our witnesses for your testimony. And if it is any comfort to you, I think I am the last member to ask questions.

You know, under current law, TSCA uses a ``unreasonable risk'' standard to evaluate the safety of a chemical. This is understood to be a cost-benefit standard. In effect, a cost-benefit approach requires the Agency to balance the economic value of a chemical against the adverse health impacts, whether they be cancer, autism or any of the other serious threats.

Besides posing a serious ethical problem, this approach has also proven, and I think you might agree, to be unworkable. And that is what the subcommittee has repeatedly received testimony, that TSCA's safety standard is failing to protect the general public and vulnerable populations.

Since 2009, there has been widespread agreement that this cost-benefit standard needs to be abandoned. We have

heard from many stakeholders, including EPA, the American Chemistry Council and even the oil refineries, everybody seems to be on the same page on this one. They have all stated that costs should not be part of safety determinations under TSCA.

Despite the broad consensus on this matter, the discussion draft we have before us maintains the status quo on the safety standard. It makes no changes to the language of unreasonable risk or the consideration of cost during EPA's assessment of a chemical's safety. I think that is a disappointment. I am also very concerned that the safety standard in the draft will fail to protect the vulnerable populations. That is what I want to talk about for a minute.

Vulnerable populations include children, infants, the elderly, the disabled workers and those living near chemical facilities. The National Academy of Science in their 2009 report, Science and Decisions, recommended that all vulnerable populations should receive special attention in all stages of the risk-assessment process.

Mr. Belliveau, do you believe the draft as written would adequately protect vulnerable populations from dangerous chemicals?

Mr. {Belliveau.} No, I don't. It really needs to be changed so that a chemical has to be found to be safe for the

vulnerable populations explicitly.

Mrs. {Capps.} I was going to ask you what changes you would recommend. Do you want to be more specific than that?

Mr. {Belliveau.} Sure. I mean, to be fair, the drafters include a definition, potentially exposed population, that addresses some of who the vulnerable population is. It is a definition. It says that some exposures need to be considered, but you need to finish the job unless you require that you actually apply a health-based standard to the protection of vulnerable populations. It is an option. It is not a mandate. And we need to be concerned about those who are most vulnerable.

Mrs. {Capps.} And you may have already answered this, too, but just for the record, should the placement of chemicals--well, first of all, should decisions then on new chemicals protect vulnerable populations?

Mr. {Belliveau.} Yes, absolutely.

Mrs. {Capps.} Yes? And should the placement of chemicals into either low- or high-priority categories protect vulnerable populations?

Mr. {Belliveau.} Especially for the low-priority category. We need to ensure that there is adequate data to determine whether vulnerable populations may be at risk. The danger that is invited by the current draft is that literally

thousands of chemicals will be set aside as low priority with poorly understood hazards. That would not provide the protection that we are seeking for vulnerable populations.

Mrs. {Capps.} Thank you. Mr. Chairman, there is about a minute and a half left or a quarter left. This is really what I wanted to drill in on here in my question time. So would any of the other of you like to respond to this matter of protecting our vulnerable populations?

Ms. {DeFord.} Yes--

Mr. {Shimkus.} Your mike is not on. I am sorry.

Ms. {DeFord.} Sorry. What I was saying is we see the discussion draft as actually is including--there is a definition for potentially exposed populations. So we do see the discussion draft taking account--

Mrs. {Capps.} Adequately?

Ms. {DeFord.} --of that.

Mrs. {Capps.} Adequately?

Ms. {DeFord.} And I mean, we believe it is critical for that protection to be in place, both for new chemicals and existing chemicals.

Mrs. {Capps.} Anything else?

Mr. {Cik.} I will add something. The low-priority issue could be a trap for products that serve at-risk populations like babies and children, pregnant women, the at-

risk population. These chemicals can be shielded from further review. I mean, that could be a serious problem. And then you make it worse by shielding these chemicals from states to review them. It is a serious problem. We can't allow that.

Mrs. {Capps.} Okay.

Ms. {DeFord.} Maybe one point I would make on low priority is, I mean, if the Agency doesn't have sufficient information in order to make a determination, they can actually identify such as a high priority and then go ahead and collect additional information. So you know, the question, the issue around insufficient information is the Agency can realize that and make a determination about need for both exposure and additional hazard information.

Mrs. {Capps.} Thank you. I have overstayed my time but I just at least want to really acknowledge the chairman for your pledge to work with members on this side of the aisle in a real bipartisan way to improve this draft. I think that there is agreement that it may be a starting point but it needs a heck of a lot of work before it sees its final form. At least that is how I feel. Thank you very much.

Mr. {Shimkus.} I would thank my colleague and friend from California. I would just, on a side note, I would say TSCA currently has no category for vulnerable populations.

Mrs. {Capps.} Right.

Mr. {Shimkus.} Period. Nothing.

Mrs. {Capps.} Yeah.

Mr. {Shimkus.} We at least start addressing it. And I think that is a step in the right direction showing some movement.

Mrs. {Capps.} One step.

Mr. {Shimkus.} That is better than no step. But I do want to thank--I want to make sure we thank Ms. Thomas for being with us in Brussels. She is going to be allowed to go to bed. And we also want to thank the first panel for your diligence. Members were very active. This is a very important issue. We do appreciate those offers of assistance. We want to get to obviously a compromise that can move in a bipartisan manner. That is the only one that will really get appropriately on the Senate side. As was stated, we could move a Republican bill adequately and through the house, but the question is, to what end? So we are all going to have to move somewhere, and I hope we all move together.

With that, I want to dismiss the first panel and ask the second panel to come join us.

I am going to get started and welcome the second panel. I will do the same as I did the first one. I will kind of

announce you all right up front, and then we will just go with the 5 minutes. You all sat through the last panel. I think there will be a lot of good questions. I may not go as long as the first, but we are happy to have you here.

Joining us will be Mr. Mark Duvall who is a Principal at Beveridge & Diamond. Next to him is Dr. Bosley?

Ms. {Bosley.} Bosley.

Mr. {Shimkus.} Bosley. Thank you. President of Boron Specialties on behalf of the Society of Chemical Manufacturers and Affiliates. Mr. James Stem is National Legislative Director of the Transportation Division of the Sheet Metal, Air, Rail and Transportation Union. Dr. Philip Landrigan, Professor of Pediatrics, Director of Children's Environmental Healthcare Center, Ichann School of Medicine at Mt. Sinai. Welcome, sir. And Ms. Anna Fendley with the United Steel Workers.

With that, Mr. Duvall, you are recognized for 5 minutes.

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^STATEMENTS OF MARK DUVALL, PRINCIPAL, BEVERIDGE & DIAMOND, PC; DR. BETH BOSLEY, PRESIDENT, BORON SPECIALTIES LLC, ON BEHALF OF THE SOCIETY OF CHEMICAL MANUFACTURERS AND AFFILIATES; JAMES STEM, NATIONAL LEGISLATIVE DIRECTOR-TRANSPORTATION DIVISION, SHEET METAL, AIR, RAIL AND TRANSPORTATION UNION; DR. PHILIP LANDRIGAN, DEAN FOR GLOBAL HEALTH, ETHEL H. WISE PROFESSOR AND CHAIRMAN, PROFESSOR OF PEDIATRICS AND DIRECTOR, CHILDREN'S ENVIRONMENTAL HEALTH CARE CENTER, ICHANN SCHOOL OF MEDICINE AT MT. SINAI; AND ANNA FENDLEY,MPH, UNITED STEELWORKERS.

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^STATEMENT OF MARK DUVALL

} Mr. {Duvall.} Chairman Shimkus and Ranking Member Tonko, thank you for inviting me to testify. My name is Mark Duvall. I am a principal at the law firm of Beveridge & Diamond. Although I represent a variety of clients on TSCA issues, I am appearing here today solely in my personal capacity. The views I express today are my own, and I am not representing my law firm or any client of my law firm.

My comments focus on the core provisions of the discussion draft which would amend Sections 4, 5 and 6 of TSCA relating to testing, new chemicals and existing

chemicals. In my view, these provisions would strengthen TSCA in important ways.

Starting with Section 4, the draft would delete today's requirement that EPA establish both that testing is needed and that a chemical substance may present an unreasonable risk or other finding. It would only require EPA to conclude that testing is needed. Where appropriate, EPA would be able to impose testing requirements by order rather than by rule. This should streamline its ability to require testing.

The draft would also facilitate transition to the more sustainable toxicology testing of the future. It would encourage the use of innovative technologies while leaving EPA with the discretion to require animal testing where alternatives are not yet available or sufficiently reliable.

With respect to Section 5 of TSCA, for the first time EPA would have to decide whether a new chemical substance would or would not be likely to result in an unreasonable risk of harm under the intended conditions of use. The draft bill would authorize EPA to require testing to develop the information it needs in order to make that determination if the information was not provided by the submitter.

The draft bill would also clarify and strengthen EPA's ability where appropriate to restrict new chemical substances as they enter the market.

Turning now to Section 6, one of the most important changes to TSCA would be the prioritization provision. Current law has no driver that requires EPA to prioritize chemical substances for review and then review them systematically. As a result, EPA has faced challenges in obtaining necessary funding from Congress or clearances from OMB. The draft bill would provide that driver.

The prioritization provision would direct EPA to establish a risk-based process for designating chemical substances as either high or a low priority for a safety determination. Those designated as high would proceed to a safety determination. Those designated as low would not. At any time, EPA could revisit a designation and change it if the available information supported a change in EPA's discretion.

Safety determinations are the second step in addressing chemical safety systematically. EPA would be required to make safety determinations for high priority substances. The safety determination would conclude either that a chemical substance will or that it will not result in an unreasonable risk of harm to human health or the environment under the intended conditions of use. EPA could require testing if needed in order to make a safety determination.

This unreasonable risk standard which has been discussed

already this morning would be very different from the similarly worded standard of current TSCA and certain other statutes and would have a different effect. Unlike those other statutes, the draft would separate out the determination of risk which is primarily a scientific conclusion from decisions about risk management. The safety determination itself would be based on scientific factors, considerations of risk and so on. It would be risk-based. It would consider information on potentially exposed subpopulations that EPA would take into account in making a determination of unreasonable risk. But there is no provision in the bill for the weighing of costs and benefits in making a safety determination. If that is not clear, then legislative history or additional drafting should make it clear.

The bill's risk management provision would delete the least burdensome alternative requirement of TSCA and delete many of the procedural requirements that EPA has found to make rule making difficult. Instead, it would require EPA to make certain findings before imposing risk management controls. For example, EPA would have to determine that the controls will result in net benefits and would be cost effective. These requirements have been in place for over 20 years because they were part of the executive order issued by

President Clinton and reaffirmed by President Obama. EPA has not found these executive orders to be obstructing it from completing its work. And where risk management measures would amount to a ban, EPA would have to ensure that feasible alternatives are available that would reduce the risk. This provision would address the concern reflected in California's green chemistry regulations about regrettable substitution.

In conclusion, the draft bill would strengthen TSCA's core provisions. It would delete requirements that have hampered EPA's ability to regulate chemical risks. It would provide EPA with new flexibility in exercising its authority, and it would require EPA to act in ways that promote good governmental decision-making.

Thank you for considering this testimony.

[The prepared statement of Mr. Duvall follows:]

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Mr. {Shimkus.} Thank you. The chair now recognizes Dr. Beth Bosley. You are recognized for 5 minutes.

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^STATEMENT OF BETH BOSLEY

} Ms. {Bosley.} Thanks very much, Chairman Shimkus, Ranking Member Tonko and other members of the subcommittee. My company, Boron Specialties, is a specialty chemical manufacturer and a woman-owned small business. We are located in Pittsburgh, Pennsylvania. We are also members of the Society of Chemical Manufacturers and Affiliates, known as SOCMA.

As an entrepreneur and a business owner, I offer a unique perspective that I hope you will find helpful as you consider this draft legislation which is a clear improvement over the status quo. I would like to discuss some important areas of the draft.

First, a robust new chemicals program is essential to America's ability to innovate and to create jobs. I cannot overstress the importance of market access to start-ups and small businesses. In general, the new chemicals provision in the draft bill preserves the delicate balance in existing law between the opportunity to innovate and protecting human health and the environment. The draft retains current statutory exemptions and the authorization for other exemptions such as for research and development.

As a clarification, when I speak of exemptions, I do not mean exempt from TSCA or any other compliance obligations. All I am talking about is exempt from premanufacture notification requirements or that they are eligible for expedited review so long as they meet certain criteria.

Chemicals making use of these exemptions are actually inherently restricted since they are bound by rigorous criteria. The draft also maintains the 90-day review period for PMNs. EPA currently completes review of many new chemicals in far less time than 90 days while still being protective. So this is reasonable. The draft would require EPA to determine during that review period whether a new chemical is likely to meet or not likely to meet a safety standard. This is a significant step forward.

As the subcommittee considers the bill further, I offer some suggestions regarding the treatment in Section 5. Current law authorizes EPA to extend the 90-day review period by rule which is usually procedurally too demanding. So EPA uses 15-day extensions with consent of the submitter. I would urge this aspect of the current bill be adopted rather than allowing an automatic 90-day extension.

I believe some drafting corrections might be warranted also to clarify EPA's ability to use significant new-use rules that are applicable to everyone and to authorize

commencement of manufacture upon the establishment of Section 6 restrictions. We would be happy to discuss these with subcommittee staff off-line.

The draft bill also strengthens Section 14, confidential business information provision, and represents a balanced approach to increased transparency while preserving trade secret protection. The bill imposes reasonable limitations on CBI. Companies would have to determine how long they believe their CBI protection is necessary, and they would have to resubstantiate over time. This fixes one of the core problems under the current law, the open-ended protection of CBI.

The draft would break the inventory of existing chemicals into active and inactive lists. This will help EPA focus its resources on prioritizing a much smaller list of active chemicals which will expedite review.

As I have mentioned in prior testimony, the bill should also expand TSCA Section 8(e) to authorize submission of non-adverse data and to require EPA to take this data into account. Presently Section (e) is bias toward adverse data.

I am pleased to see that the EPA would be able to obtain information from downstream processors who are in a much better position to report on market applications and exposure patterns for the chemicals they use. I am somewhat concerned

that the bill does not require some degree of processor reporting, however.

After prioritization, should EPA determine that more data is needed to affirm safety, it would be given enhanced mechanisms for this data collection.

TSCA Section 4 would also be strengthened by expanding EPA authority to request data either by rule, by consent agreement or by order, and it is this order authority that will speed action. As a caveat, however, before ordering testing, EPA should first consider all the available information that it has. It should have sound scientific and risk basis for the request, and testing should be tiered.

The risk management provision under the current statute has received criticism for the unreasonable risk standard being too cumbersome for EPA to implement. It requires EPA to determine the least burdensome regulatory measures for chemicals that present a risk.

In the draft, cost and benefits are separated from what is now a purely health- and environment-based safety standard, and the least burdensome requirement is removed. EPA would instead have to look at risk management measures that are proportional to the risk that provide net benefits and are cost effective. These are all positive steps.

Perhaps the bill's greatest improvement over the Senate

bill is its clarification that low-priority determinations would be judicially reviewable. This solves the problem of state requirements being preempted by actions that are not subject to judicial review.

I have covered the major ways in which this bill is an improvement over the status quo. The bill provides a vehicle for balanced TSCA reform and discussion crucial, unaddressed issues. I hope this hearing marks the first step in a constructive bipartisan process to facilitate this advancement. Thanks very much for the opportunity to share my perspective.

[The prepared statement of Ms. Bosley follows:]

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Mr. {Shimkus.} Thank you. The chair now recognizes Mr. James Stem. Sir, you are recognized for 5 minutes.

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^STATEMENT OF JAMES STEM

} Mr. {Stem.} Mr. Chairman and Ranking Member Tonko, thank you for the opportunity to offer our input. My name is James Stem, and I serve here in Washington as the National Legislative Director for our largest railroad union, formerly known as the United Transportation Union. I am speaking to you today on behalf of the tens of thousands of men and women that are working today, operating our railroad system and who as a part of their daily responsibilities of safely moving the thousands of tons of chemical products around our country that have been requested by local businesses and local government bodies throughout.

I wish to commend the subcommittee for returning to regular order and for its work on this draft. All of us in this room are hoping to reform TSCA during 2014.

There were five unions that have been participating and expressing our optimism of the bipartisan nature of the Senate deliberations on this subject, and we will continue to work with the House committee in order to achieve that bipartisan result here. We congratulate you for that.

Modernizing TSCA takes on a new urgency as our American chemical industry prepares to make major investments in U.S.

production facilities in the wake of the natural gas boom. The industry has announced over $100 billion in planned U.S. investments that will not only use domestic natural gas to make products but also put our American people back to work. The U.S. chemical industry will generate tens of thousands of new American jobs in manufacturing, construction, energy infrastructure, technology, transportation and additional research and development. The industry already provides 800,000-plus well-paid U.S. jobs and indirectly supports millions more. The substantial tonnage of chemical shipments on our Nation's freight railroads helps to support good railroad jobs. Exporting thousands of tons of chemical products manufactured in this country by American workers is not a dream. That is the reality that is on the on the table today.

Transporting the needed chemical products that our U.S. manufacturing sector requires from the chemical production facilities to the final destination by rail is the safest form of transportation. Railroads have the capacity and the experienced workforce to move these products safely and efficiently without putting thousands of tanker trucks on our overburdened highways.

We support a reform that will achieve the following goals: number one, strengthen our chemical safety law to

protect human health and the environment. Two, restore public confidence about the safety of chemicals in commerce, and three, help the U.S. chemical industry innovate and grow, so it can provide good jobs. Directly and indirectly, TSCA impacts chemical safety, our economy, and the health and well-being of many workers and their families.

Americans in every state need to be confident in their homes, workplaces and communities that our Nation's chemical regulations are robust and working to protect them.

This draft will fix significant problems that have been encountered and identified with TSCA. For the first time, EPA will be required to systematically evaluate all chemicals in commerce, including TSCA's grandfathered chemicals, and label them as either high- or low-priority based on potential health and environmental risks. Chemicals requiring the most immediate attention from regulators should be successfully identified for action by this process. This ranking system must be carefully crafted as the proposals move forward so that confidence in its dependability is high.

High-priority chemicals will require EPA to perform a safety-based risk assessment. EPA must determine whether a high-priority substance will result in unreasonable risk of harm to human health or the environment under its intended condition of use. Low-priority chemicals can be reclassified

as high priority when necessary.

EPA will be able to demand more health and safety information from chemical producers. EPA will also delineate which chemicals are in active use and which are not, ending confusion about the actual number in use.

These improvements will make TSCA more effective. However, we recognize that the drafting process must address additional significant issues.

All of us here today are aware of the state preemption controversy with regard to reforming TSCA. As a practical matter, we agree that effective national regulation of chemicals in commerce is generally preferable to state-by-state regulation. At the same time, states must be able to successfully address local issues and concerns. A strong, uniform, robust and workable national law is preferable to 50 states regulating independently. Using rigorous scientific testing before a chemical is made available in any state is the recommendation. The need to improve the protection of vulnerable populations provide more definitive timelines for action by EPA and finally as a separate but related matter, EPA must be given the resources needed to carry out the reform and these new responsibilities.

I thank you for the opportunity to speak.

[The prepared statement of Mr. Stem follows:]

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Mr. {Shimkus.} I thank you. The chair now recognizes Dr. Philip Landrigan for 5 minutes, sir. Welcome.

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^STATEMENT OF PHILIP LANDRIGAN

} Dr. {Landrigan.} Thank you, Mr. Chairman, Ranking Minority Member Tonko from--

Mr. {Shimkus.} Can you pull that a little bit closer?

Dr. {Landrigan.} Yes, sir.

Mr. {Shimkus.} Much better. Thank you.

Dr. {Landrigan.} I am Philip Landrigan. As you said when you introduced me, I am a pediatrician, and I am here today to talk about the discussion draft, and I want to really focus on the inner section between Chemical Safety Legislation and Children's Health because this bill is not merely a chemical bill. It is a public health bill, and the public health issues in my opinion have to be front and center in the debate.

So let me start by pointing out to you that rates of a whole series of chronic diseases are on the rise in American children. Asthma has tripled. Childhood cancer incidence has gone up by 40 percent over the past 40 years. Autism now affects one child in 88. Attention Deficit Hyperactivity Disorder affects about one child in seven according to data from the CDC. These chronic diseases of children are highly prevalent in today's world. They are on the increase. They

affect children of every social stratum, children whose parents might be of any political persuasion. This really ought to be a non-partisan bill because it is about the health of all Americans.

There is a strong body of scientific evidence that toxic chemicals have contributed to diseases in children. Going back 100 years ago, lead was show to cause mental deficiency, learning problems, loss of IQ. Seventy-five years ago, methylmercury. More recent, clinical and epidemiologic studies have linked organophosphate pesticides, arsenic, manganese, brominated flame retardants, phthalates, bisphenol A to learning disabilities, loss of IQ, problems of behavior in children. All of these chemicals that I have listed have been studied in investigations supported by the National Institutes of Health, published in peer-reviewed journals, reports that have withstood extensive scrutiny. And this body of evidence is growing by the year.

Now experience has taught us that when we know the risk factors to disease, we can intervene against those risk factors. The first great teaching in this regard came from the Framingham Heart Study launched in 1948 in Framingham, Massachusetts. It was the Framingham Heart Study that taught us all about the big risk factors for heart disease: hypertension, smoking, cholesterol, diabetes, sedentary

lifestyle, obesity. And because doctors and nurses and health professionals and citizens across America have become aware of these risk factors, they have intervened against them, and one of the best kept secrets in American medicine is that the death rate from heart disease has gone down by 50 percent in this country over the past 40 years. Yes, heart disease is still the leading killer, but it is half the killer it was.

The same logic applies to preventing disease and dysfunction caused by toxic chemicals. In 1976, based on data showing that lead was toxic to children, even at low levels, EPA made the courageous decision to remove lead from gasoline. What happened was astounding. Blood lead levels plummeted, and they have come down 95 percent since 1976 in this country. The average IQ of American children has increased by somewhere by somewhere two and five points as a consequence of the decline in blood lead levels, and because IQ points are worth money, if you do the math, we have 4 million babies in this country each year, four or five IQ point increase per child, $10,000 per IQ point over the lifetime of a child. Researchers at Harvard have done that arithmetic and have calculated that the economic benefit to the United States of America of the single action of getting lead getting lead out of gasoline is $200 billion in each

crop of babies born since 1980 since blood lead levels came down.

So a big problem today in this country is that our children are surrounded by thousands of untested chemicals. How many more leads? How many more PCBs? How many more organophosphate pesticides are out there today that might be entering the bodies of pregnant women, damaging the brains of unborn children in the womb, damaging nursing infants, damaging little kids? Nobody knows. We don't know because we haven't done the testing. We are flying blind.

A pediatric colleague, Dr. Herbert Needleman of the University of Pittsburgh who has done much work on childhood lead poisoning, has described the situation as follows. Needleman says, ``What we are doing in this country is we are conducting a vast toxicological experiment, and we are using our children and our children's children as the unwitting, unconsenting subjects.'' This is a situation that needs to be fixed. It is not sustainable, it is not wise. I would argue that it is not even moral to permit exposure of babies in the womb, infants and young children and other vulnerable populations such as workers and the elderly to untested chemicals of unknown hazard.

So it is clear that we need to move forward to fix TSCA. Mr. Chairman, I salute you and your colleagues for having

started the process. I salute my dear, beloved departed friend, Frank Lautenberg, who was a pioneer for so many years, Senator Lautenberg of New Jersey, in advancing chemical safety legislation. We need to test both existing as well as new chemicals for safety.

And as I close, there are a couple of architectural requirements that I think are essential to be included in any law that you draft going forward. First and foremost--

Mr. {Shimkus.} You are getting close to a minute over so--

Dr. {Landrigan.} All right.

Mr. {Shimkus.} Is it in your written--you got this finally in your written statement also?

Dr. {Landrigan.} Yes, sir. Protect kids, set timelines, safety standards and adequately fund EPA. Thank you very much.

[The prepared statement of Dr. Landrigan follows:]

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Mr. {Shimkus.} Thank you. The chair now recognizes Ms. Fendley for 5 minutes.

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^STATEMENT OF ANNA FENDLEY

} Ms. {Fendley.} Great. Chairman Shimkus, Ranking Member Tonko and members of the committee, thank you for the opportunity to testify. I am here on behalf of the United Steelworkers. We are the largest industrial union in North America and represent the majority of unionized chemical workers.

As witnesses in this and past hearings have stated, TSCA is woefully out of date and ineffective. Governments around the world have enacted chemical laws that are more protective than TSCA. Members of our union rely on the jobs in the chemical industry, and we support reform because know that it will make American manufacturing more competitive. However, while industry competitiveness and consumer confidence are important considerations for reform, protecting public health must be the primary goal.

We appreciate that this subcommittee has held so many hearings on TSCA reform. However, we are disappointed in the CICA. This draft would merely amend, not reform, TSCA and would result in a less-protective, less-functional federal system for assessing and restricting industrial chemicals. The remainder of this testimony will highlight some of the

shortcomings.

First, the safety standard. One often-cited example of the ineffectiveness of the law is EPA's attempted ban of asbestos using the unreasonable risk safety standard and the least burdensome requirement for restrictions. CICA retains the highly problematic safety standard by neglecting to include a definition that specifies health-only considerations. And although the draft does not retain the language of the least burdensome requirement, it functionally recreates the requirement in Section 6(f)(4). These provisions place an impossibly high burden on EPA and do not fix the problems in existing TSCA that have prevented the Agency from acting on chemicals.

Second, prioritization. The scheme laid out in Section 6(a) of the draft would result in chemicals falling through the cracks due to considerations of cost versus benefits and chemicals being prioritized without adequate information. Specifically, a chemical must be listed as high priority if it has the potential for high hazard and high exposure, but it only may be high priority if it is either highly hazardous or there are high exposures. And a low-priority chemical will not be further evaluated or have a safety determination even though EPA may not have sufficient information for an informed determination of the chemical's safety.

Third, new chemicals. The draft would weaken existing provisions for new chemicals. Real reform would prove safety before market access. But Section 5 of the draft makes it nearly impossible for EPA to get safety information for new chemicals, and the Agency must make a safety determination using the unreasonable risk standard within 90 days or the chemical can go on the market and states are preempted from acting.

The draft also eliminates Section 5(e) from existing TSCA which includes worker protections and limits environmental releases.

Fourth, vulnerable populations. As has been discussed already, the draft does not adequately protect these groups. In fact, there is only one mention of them aside from the definition, and that clause requires EPA to analyze the exposures of vulnerable populations that are significant to the risk of harm. There is no requirement to protect or consider them during prioritization.

Fifth, confidential business information or CBI. Provisions in TSCA that protect CBI are important to competition and innovation, but they also have the potential for abuse. The draft expands the information that can be claimed as CBI and has a problematic clause that grandfathers previous claims. Real reform would make more, not less,

information about the safety and use of chemicals available.

Finally, deadlines and resources. Ultimately TSCA reform will never work if the Agency is not provided with clear, enforceable deadlines and adequate resources to move the program forward. The draft does not incorporate either of those. Even those stakeholders have underscored their importance. My written testimony also details the draft's problems related to testing authority and overreaching preemption.

In closing, the USW strongly supports working on TSCA reform during the 113th Congress with the goal of developing meaningful legislation that qualifies as actual reform. However, this draft would set us back from the status quo and from other parts of the world. TSCA reform must give EPA the necessary authority and resources to get the information the Agency needs, make safety assessments and determinations and restrict the use of chemicals that do not meet a health-only safety standard. We look forward to working with the subcommittee and any other stakeholders in developing legislation that would protect worker and public health. Thank you.

[The prepared statement of Ms. Fendley follows:]

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Mr. {Shimkus.} Thank you very much, and I know the folks out there observed me--this is causing me to drink. So I have got my chemically induced Diet Coke and my chemically induced Hershey candy bar which does bring up a point. One part of the problem with TSCA is that TSCA makes the assumption every chemical is toxic. And that whole prioritization issue is part of that debate. Not every chemical is toxic. Otherwise, we would have huge problems.

So I just thought of that. I recognize myself for 5 minutes for my first round or the opening round of questions to this panel. Mr. Landrigan, I just want to ask, you said in the first panel current TSCA does not mention vulnerable populations. Is that correct?

Dr. {Landrigan.} That was said at the first panel, yeah.

Mr. {Shimkus.} Yeah.

Dr. {Landrigan.} I believe that--

Mr. {Shimkus.} And you understand that? I mean, there is no mention. Current law does nothing to that vulnerable population that you are concerned about?

Dr. {Landrigan.} That is right.

Mr. {Shimkus.} Okay. And at least we are starting the debate on how to address vulnerable populations. Would you

agree with that?

Dr. {Landrigan.} That is correct. Yes, sir.

Mr. {Shimkus.} Thank you. Mr. Duvall and Dr. Bosley, I am giving you a chance to respond to some of the statements made in either this panel or the other panel to maybe something that caught you that it is, you know, this is very intense and there are opinions on both sides. So the opportunity to respond to something you may have heard and would like to at least give your side of that story.

Mr. {Duvall.} Thank you. There are several points I would like to make. One of the first is a widespread perception that the unreasonable risk standard of the draft bill would be no different from the unreasonable risk standard of current TSCA. My understanding from reading the bill is that that is not what is intended and that would not be the effect and that the key provision on unreasonable risk is the safety determination provision which identifies the basis on which a safety determination would be made. The draft bill reads, ``The Administrator shall make a safety determination based on the best available science related to health and environmental considerations and in accordance with the weight of the scientific evidence.'' That is not a cost-benefit exercise.

Another point I would make would be related to

preemption. It is important to recognize that there is no preemption except where EPA would take preemptive actions. So it is not the case that entire statutes would be preempted at the state level or local level. Instead, only where there is a federal action which, under the statute, would there be preemption. There is a suggestion that past EPA actions will preempt entire statutes. I would disagree. It seems to me that the purpose of that reference to preemption prior to the effective date is simply an effort to preserve preemption that has occurred. An example would be state or local PCB restrictions which the courts have determined were preempted years ago. Presumably PCBs would not go through a safety determination, at least soon in the process, because EPA has already comprehensively addressed PCBs. And yet, if preemption is tied solely to the safety determination process, then you would lose the preemption of state PCB laws without a savings clause.

Mr. {Shimkus.} Let me give Dr. Bosley a chance with the remaining time I have.

Ms. {Bosley.} Sure. I would like to reiterate that cost-benefit analysis, the initial analysis is done without regard to cost at all. The safety determination is made really whether a chemical will or will not meet the safety determination. No cost is anticipated there.

During the risk assessment portion, EPA can take costs into account. For instance, if a chemical cannot be tested economically, the chemical may go away all together, and if there is no other chemical waiting to take its place, then certain critical uses, very low-exposure critical uses, could be at risk.

The other point is under Section 5. We hear a lot about data not being available under Section 5 and that the CICA doesn't take steps to address that. And it is not so surprising that manufacturers have to back up a long time before they go to market with a chemical, and you don't want to test when you don't have things like final specification and you don't have final physical form. You don't know if there is going to be a large market or a small market. So you don't usually test that far before something goes to market. But it doesn't mean that testing stops. So under Section 8(e), we give EPA after--post-haste. After the testing is done, we give them that information. But that information is available eventually.

Mr. {Shimkus.} Yeah, in the first panel, and I will end up with this. And he is still in the audience. Mr. Belliveau mentioned being overly burdened to the EPA. And it is my understanding that that overly burdensome aspect is them asking for information.

Ms. {Bosley.} Yes. That is part of it. Yes.

Mr. {Shimkus.} All right. So thank you. I yield to the Ranking Member Mr. Tonko for 5 minutes.

Mr. {Tonko.} Thank you, Mr. Chair. TSCA reform is about protecting human health and the environment from dangerous chemicals by systematically assessing and managing chemical risks in this country. Effective regulation will depend on strong science. Yes, this draft limits EPA's access to existing information and the Agency's ability to require testing.

With that being said, Dr. Landrigan, should TSCA reform expand the scientific information available to EPA and the public about chemical risks?

Dr. {Landrigan.} Yes, sir. I would absolutely say that EPA should have access to all of the best science in assessing risk.

Mr. {Tonko.} Thank you. And to use your words, you said we are flying blind. Do you have suggestions for how this draft might be changed to achieve that goal?

Dr. {Landrigan.} I am neither a lawyer nor a legislator. So I will speak in terms of principles rather than amending specific clauses. But I think there needs to be strong, very specific language about protecting vulnerable populations. There have to be clear deadlines. There has to

be--the emphasis on safety has to far outweigh the emphasis on cost. Safety should come first. And there should be adequate funding for the Agency.

Mr. {Tonko.} Thank you. Ms. Fendley, do you agree that TSCA reform should provide more scientific information about chemicals to the Agency, the public and those who are exposed to chemicals in their workplace?

Ms. {Fendley.} Yes, I do.

Mr. {Tonko.} And do you have suggestions for this panel for how this draft might be changed to achieve that goal?

Ms. {Fendley.} Yes, specifically not grandfathering all of previous CBI claims which is included in the draft and also expanding the amount of information about safety and uses that the EPA can obtain and then share with the public and workers.

Mr. {Tonko.} Thank you. We have heard from GAO and other stakeholders throughout this process that EPA needs more information and stronger testing authority. But this draft would restrict what science EPA can use to only studies that meet statutory criteria for best available science and information quality. By including these provisions, the draft puts courts in the position of determining what the science EPA should use, and they also allow for advances in technology.

Ms. Fendley, do you have concerns about the good science provisions in this particular draft?

Ms. {Fendley.} I do, yes.

Mr. {Tonko.} And Dr. Landrigan, what mechanisms are in place within the scientific community to ensure that EPA uses good science in assessing chemicals?

Dr. {Landrigan.} Scientists are constantly developing new techniques importing technologies from one branch of science to another to dig deeper into toxicology, and what scientists do to get that information out into the marketplace where it is available to EPA is that they put their results through peer review and publish them in widely read journals which are certainly accessible to EPA.

Mr. {Tonko.} Should we be concerned about putting courts in the position of determining what science should be relied upon and what science should not be relied upon?

Dr. {Landrigan.} Scientists are better able than the courts to judge the validity of science. I have always thought that.

Mr. {Tonko.} Thank you. Well, I agree, and I am concerned about the costs and the delays that go along with litigation. It doesn't solve a problem. Perhaps it expands upon that problem. We need to expand the scientific information available to EPA and the public and not restrict

the Agency's ability to consider relevant science and create new reasons for litigation.

Mr. Chair, I think we have our work cut out for us to strengthen this bill. But I look forward to continuing to work with the subcommittee and the committee at large to address these issues. And with that I yield back.

Mr. {Shimkus.} The gentleman yields back his time. And again, the chair thanks him for his comments. The chair now recognizes the gentleman from Florida, Mr. Bilirakis, for 5 minutes.

Mr. {Bilirakis.} Thank you, Mr. Chairman. I appreciate it very much, and thank you for your testimony. This question is actually for Mr. Duvall. We frequently hear that 80,000 chemicals in commerce number--the number is overstated. Was the inventory reset provisions under the current draft improve our understanding what is in commerce? If so, if that is the case, would the current draft improve the current situation under TSCA today?

Mr. {Duvall.} Yes. The inventory reset would certainly provide valuable information for EPA, for the public and for the Congress to understand what the numbers are that are realistically in play. There are approximately 84,000 chemicals listed on the TSCA inventory but only about 7,800 chemicals were reported in the 2012 Chemical Data Reporting

Rule. Presumably since not all chemicals in commerce are reported per CDR, there are some number higher than 7,800. But it is helpful to understand that the universe of chemicals that EPA should focus its scarce resources on is of limited number and not something like 84,000.

Mr. {Bilirakis.} Thank you. Next question again for Mr. Duvall. The current draft provides for the reentry of inactive chemicals to active status on the inventory. Again, I apologize for my laryngitis. Would you describe that process as one that can be accomplished by chemical manufacturer or processor without an undue amount of bureaucratic red tape?

Mr. {Duvall.} Yes. My understanding is that the process is mostly a notification requirement. Simply send a notice into EPA saying that you have met the criteria for an active substance, and EPA would then add it to the active substance list.

Mr. {Bilirakis.} Why is it important to the free flow of commerce and the economy in the United States?

Mr. {Duvall.} I am--why is what?

Mr. {Bilirakis.} Why is it important to the free flow of commerce and the economy in the United States?

Mr. {Duvall.} I see the inventory reset provision as primarily a tool to help EPA focus its resources. It is

important for EPA to protect the people of the United States, protect its environment, including vulnerable subpopulations. But in doing so, it can't do everything at once. It must focus on its resources in a rational, reasoned way and then follow through. And the inventory reset is one tool among others that the draft bill would provide to EPA to help it do a better job than it has been able to do so far under current TSCA.

Mr. {Bilirakis.} Very good. Thank you, Mr. Chairman. I yield back.

Mr. {Shimkus.} The gentleman yields back his time. The chair now recognizes the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. {McNerney.} Thank you, Mr. Chairman. I want to reiterate a statement that I made that public concern about chemical safety is a significant issue, and unless we address that, then we are not going to get anywhere by passing laws that don't achieve that goal.

One of the questions I have is about--I mean, when we hear testimony that is sort of contradictory, I always get confused. Mr. Duvall, you seem to be saying that you think that the CICA will reduce the legal burden on the EPA to move forward with the regulations. Is that your opinion?

Mr. {Duvall.} Yes, it is. EPA tried for 10 years to

regulate asbestos and failed, in part because it did not do what the statute told it to do. One of the things that the statute told it to do was to identify the least burdensome alternative. And the draft bill would delete that requirement. There are also a number of burdensome procedural processes that EPA must go through to regulate under current Section 6. Those procedures would also be dropped. What would be left would be a broad authority for EPA to select appropriate risk management in the case where it had determined that there was an unreasonable risk that needed to be redressed, and only consider in doing so key considerations that are in the nature of good governmental decision-making, such as are there net benefits? The net benefits requirement to be considered should not be a straightjacket. The--

Mr. {McNerney.} Well, let me stop you there if you don't mind. One of the questions that was asked earlier I thought a lot of by my colleague from Texas, whether or not the priority should be given in decision-making to risk--the cost benefit or health and safety risks. Would you just give a yes or no answer to whether--

Mr. {Duvall.} Risk. Clearly risk-based.

Mr. {McNerney.} Ms. Bosley?

Mr. {Duvall.} And for prioritization, clearly it should

be a risk-based process.

Ms. {Bosley.} I agree. Risk-based is the best scenario.

Mr. {McNerney.} Mr. Stem?

Mr. {Stem.} Health and safety.

Mr. {McNerney.} Okay. Dr. Landrigan?

Dr. {Landrigan.} Health and safety.

Mr. {McNerney.} Ms. Fendley?

Ms. {Fendley.} Health and safety.

Mr. {McNerney.} So that was unanimous. I mean, both panels, every person agreed that health and safety should be the priority. The CICA creates new prerequisites for limiting approved use of chemicals blocking the EPA from taking action unless there is a cheaper substitute available. But as every member of both panels agreed, health risks should be the primary purpose or should be the primary deciding factor of the law.

Dr. Landrigan?

Dr. {Landrigan.} I absolutely agree with that, that health should be the primary driver.

Mr. {McNerney.} So having a cheaper substitute, requiring the determination of a cheaper substitute should not be a determining factor?

Dr. {Landrigan.} In my opinion, not.

Mr. {McNerney.} Okay. Ms. Fendley?

Ms. {Fendley.} I would agree.

Mr. {McNerney.} Okay. With that, I am going to yield back, Mr. Chairman.

Mr. {Shimkus.} The gentleman yields back. At this time, I want to really pose a question to the panel. We have got two hearings going on at the same time, and votes are going to be called in about 20 minutes. There is a desire to let my colleagues get back from this other hearing walking back and forth. One might be coming in now. One is coming in now. So I think I have got an agreement with my colleague that once votes are called we will stop and then we will adjourn the hearing, but we would like to keep going on until that time. And it may require in essence a second, if I have to bounce back and forth now and then. And you are agreeable to that? Great. And now I would like to recognize my colleague, Mr. Green, for 5 minutes.

Mr. {Green.} Thank you, Mr. Chairman. I apologize. As our witnesses know, Wednesday has got to be the worst day on the Hill.

Mr. {Shimkus.} Your apology is noted into the record.

Mr. {Green.} First of all, I have some questions, but I represent an area that has a whole lot of United Steelworkers. In fact, four of our five refineries and a lot

of chemical plants. So obviously steelworkers have an impact on this and their members do because they are my constituents.

My first question, Ms. Fendley, as a representative of an organization whose members regularly work in close contact with chemicals, do you believe that the Chemicals in Commerce Act establishes a working, appropriately protective safety standard that allow the EPA to ban dangerous chemicals that your members come in contact with on a regular basis?

Ms. {Fendley.} No, I do not. It does not sufficiently amend TSCA.

Mr. {Green.} Okay. Do you believe the Chemicals in Commerce Act would offer any improvement to the health and safety of the chemical workers under current law?

Ms. {Fendley.} No, I do not.

Mr. {Green.} Okay. You mentioned in your testimony that draft removes the least burdensome language found in current TSCA but recreates later in Section 6. Can you elaborate on that claim?

Ms. {Fendley.} Sure. So it recreates the least burdensome requirement using different language that requires that considerations about net benefits and cost effectiveness are used when regulating a chemical.

Mr. {Green.} Okay. The other thing I noticed in the

draft, do you believe that the federal statute should explicitly guarantee whistle-blower protections and the right to know for people who work on the plant site?

Ms. {Fendley.} I do, absolutely. That is very important.

Mr. {Green.} Okay. Mr. Chairman, I know this is a work in progress, and I think these hearings are what we are trying to do is lay a groundwork on how we need to look at the draft. But I appreciate your effort to get us there.

Dr. Landrigan, why should EPA be required to consider vulnerable populations such as children and pregnant women in safety determinations?

Dr. {Landrigan.} The rationale for that goes back 20 years. In 1993 I chaired a report from the National Academy of Sciences that systematically examine differences between children and adults and their vulnerability to toxic chemicals. And we found overwhelmingly that children are more sensitive to chemicals than adults. And we concluded further that children require higher levels of protection in law than adults. And that logic was actually incorporated by the Congress into the Food Quality Protection Act, the federal pesticide law.

I would argue that the same logic ought to apply to all chemicals, whether they are pesticides or commercial

chemicals.

Mr. {Green.} One of the questions I asked to the first panel is if a substance is designated as a low priority under the draft by EPA and then several years later, scientific study comes out that shows that substance may be hazardous to human health, I don't think the draft has it in there, but should EPA have the authority to consider the new information in order to go back and recategorize that substance as a high priority?

Dr. {Landrigan.} Yes, sir. I think it is essential that they should have access to that new information, and it is also--picking up on a conversation a moment or two ago, it is important to recognize that new information is very frequently going to come out from epidemiologic studies or non-standard toxicologic studies using novel techniques that don't fit the science definition that is in the bill as it now stands. And the EPA has to be given the power to broadly consume new science in the marketplace.

Mr. {Green.} Well, you know, if a study is done this year and the designation is a low priority--we also know that chemistry changes, everything changes over the years. And I know the manufacturers want some certainty on what they are doing. But we also know that at any given time something is going to change, whether it is whether we find out from

studies or that there is a problem with it and that is what concerns me. I want to give EPA the authority, but I want to make it, you know, science-based enough that we just don't have these continual lawsuits on something that, you know, really is not going after the issue.

So our goal is to protect folks but also to make sure that there is some certainty there. And so that is why this is a working draft, and I hope we will address some of that in future drafts.

Dr. {Landrigan.} Yeah. You know, there may be a parallel here in food and drug law or in the--chemicals intended to be pharmaceuticals were extensively tested before they come to market, and certain criteria are met and then FDA lets the chemical come to market. But once it is out there, the process doesn't end and post-marketing surveillance continues. And we ought to have that same kind of provision here in the universe of consumer and industrial chemicals.

Mr. {Green.} Okay. One of the things that--I am out of time but not only before a chemical is approved or it is set as a low priority or high priority, if there is something later on that the manufacturer discovers in their product, shouldn't they be required to come back to EPA in this case, just like a drug manufacturer should go back to FDA?

Dr. {Landrigan.} I think it should be mandatory and I think further that there should be penalties attached to failure to report.

Mr. {Shimkus.} I thank my colleague. Mr. Green, Mr. Duvall is trying to get your attention on responding to one of those questions. I wanted to give him--well, I am taking my time now in the second panel so but since he was trying to respond, I will use my time to let him do that.

Mr. {Duvall.} Thank you. I wanted to call Mr. Green's attention to a provision that reads, ``The Administrator may revise the priority designation of a chemical substance based on consideration of new information.'' So there is a provision there that allows reprioritization at any time. If the language isn't right, then it should be fixed. But I think the idea is there.

Mr. {Green.} Thank you.

Mr. {Duvall.} And I might mention also that current TSCA has a provision requiring manufacturers and others who obtain significant information about chemical hazards to report it to EPA immediately, and there are stringent penalties for not doing so.

Mr. {Shimkus.} Great. I appreciate that. Using my time in the second round now, I am also joined by Mr. Harper, and we are waiting for my friends on the other side to show

also.

Let me go back to Mr. Duvall. In your testimony you say that Section 5 would codify and strengthen EPA's current practices. You know, when you have a Congressional hearing, you hear--I mean, I am like Mr. McNerney. I mean, you hear, hell, this is the worst thing we have ever seen written and no, this thing is working pretty good. So we are trying to figure out where the truth is. In your testimony you do say that. So what is your basis for that statement?

Mr. {Duvall.} Section 5 of TSCA today is short on procedure. But EPA in its regulations in Part 720 has identified a number of critical procedures such as filing a notice of commencement of manufacture at the end of the process, which is not mentioned in the statute. What the draft bill does is to incorporate into law many of the procedural provisions that EPA has adopted by regulation and included them as a way of ensuring that since they have worked well, that EPA should continue to use them.

The bill improves the Section 5 primarily through changing the situation today where EPA can conclude that it would just let the review period expire without reaching a decision as to whether there is a problem with the chemical or not. The draft bill would require EPA to make a determination, and if EPA were to find that it doesn't have

sufficient information, it is given a powerful tool for requiring the submitter to develop that information. The EPA can hold up the resolution of the review period until the information becomes available or it can allow the chemical to enter the marketplace but still require the manufacturer to submit the information so that it can be considered later in the prioritization process.

Mr. {Shimkus.} Speaking of the same section, why is the exemption based on, and I quote, ``likelihood of risk''? Why is that unprecedented authority?

Mr. {Duvall.} Well, it recognized that Section 5(e) of TSCA today is based on it is likely to pose an unreasonable risk provision. So that Section 5(e) authorizes EPA to take regulatory action on a new chemical. When that finding is made, this bill would do essentially the same thing. It would--

Mr. {Shimkus.} So it is not unprecedented that we have this language--

Mr. {Duvall.} It is not unprecedented. It actually strengthens EPA's ability to regulate new chemicals where appropriate.

Mr. {Shimkus.} And Dr. Bosley, some call for more extensive testing on chemicals than the Chemicals in Commerce mandates. You have spoken before on minimum data sets and

base set requirements like those in Europe. Could you please tell us again whether public health is any better protected by those kinds of mandatory requirements?

Ms. {Bosley.} They are not. Most industrial chemicals are not intended to be released to the environment or exposed to any population, whether vulnerable or not. Those sorts of testing requirements that are blanket might drive those chemical manufacturing from the United States. We simply-- you know, we operate in a market economy, and we simply can't afford to--

Mr. {Shimkus.} Where would they go?

Ms. {Bosley.} To China, to India, to Malaysia.

Mr. {Shimkus.} And what is their safety regime?

Ms. {Bosley.} Most of those countries have much less stringent safety regimes that change depending on the political nature of the environment there as well. So it is much harder for U.S. manufacturers to import into those countries, given the same chemical that might be produced in those countries. They would much favor those.

Mr. {Shimkus.} And I take obviously the saving grace right now for this country is our natural gas exploration and really holding those jobs. But I think your point is well stated that the public should not be deceived that if we move to a regime that is costly, ineffective by the manufacturers,

they could move overseas with less stringent.

Ms. {Bosley.} Yeah, in some cases we couldn't afford to manufacture the chemical here in the United States any longer.

Mr. {Shimkus.} And my friends from California are experiencing what? They are experiencing--

Ms. {Bosley.} I can tell you I have no customers in California.

Mr. {Shimkus.} California is also experiencing a 10-day lag from the air pollution from China reaching--

Ms. {Bosley.} Right.

Mr. {Shimkus.} --the West Coast.

Ms. {Bosley.} The coast. That is right.

Mr. {Shimkus.} So that has to be part of this debate, jobs and the economy. So with that I will yield back my time and yield to Mr. Tonko for 5 minutes.

Mr. {Tonko.} Thank you, Mr. Chair. This draft legislation suggests that EPA could very quickly sort the universe of chemicals into two categories. The first category would be known as high priority and chemicals in this category would be further assessed to ensure their safety. The second category would be known as a low priority, but this is a bit of a misnomer because these chemicals would be dismissed of any further examination. The

idea is that thousands of chemicals would fall into this low-priority category.

So Dr. Landrigan, in your view, do we have the information we need to complete such an undertaking with confidence that we are protecting public health?

Dr. {Landrigan.} So we don't have full information, but there are some guidelines that we can use to help EPA to move forward. One guideline would be to assign highest priority to the chemicals that are most widely found in the American population in the rolling surveys that the CDC now does every year. I am sure you are aware that CDC, in their National Biomonitoring Program, is picking up measurable levels of several hundred chemicals in the bodies of most Americans, synthetic chemicals, most of which did not exist in 1960. So to be sure, many chemicals stay inside the four walls of the chemical factories. Maybe they could be given lower priority. But the chemicals that are getting out that are widely distributed in people and the environment need to be assigned higher priority. Two more criteria for judging priority is evidence of toxicity as has already appeared in toxicological laboratories published in the peer-reviewed literature, and finally persistence in humans in the biosphere.

Mr. {Tonko.} Thank you. And does EPA know enough to

quickly go through the TSCA inventory and rule out thousands of chemicals as potential risks?

Dr. {Landrigan.} No, they don't. And the problem is it is a Catch-22 given that so little toxicologic testing has been done on so many chemicals in commerce. EPA is flying blind. There are some chemicals that we know a lot about that have been studied extensively but many, many more that are in wide use that have been little studied.

The biomonitoring survey from CDC offers some protection. It is not foolproof because they can only measure what they have the technology to measure.

Mr. {Tonko.} And what kind of information or testing will the EPA need in order to assess which chemicals in commerce are causing health offsets or--

Dr. {Landrigan.} The principles for selecting chemicals would be the ones I just mentioned, widespread use, some evidence of toxicity, persistence. Beyond that there is a lot of expert judgment here. They would clearly have to consult with their colleagues at the National Institute of Environmental Health Sciences of the NIH or developing new paradigms for high through-put toxicologic testing.

Mr. {Tonko.} And every witness on both panels today agreed that we should abandon the cost-benefit standard in current law. Unfortunately, the discussion draft continues

to use the unreasonable risk standard. Mr. Duvall, you have assured the subcommittee that the term unreasonable risk in the discussion draft needs something completely different than the term unreasonable risk under current law. A lot of experts have expressed grave concerns that that is an incorrect statement or it is wrong in substance in order to address this concern and to address the stakeholders' concerns together. Would you agree that it would be simpler to no longer use unreasonable risk and instead choose a new term that perhaps is clearly defined as not utilizing a cost-benefit approach? Is there clarification needed there?

Mr. {Duvall.} If there is another verbal formula that will achieve what is intended to be achieved, then that would be fine. During the TSCA legislative discussions for several years, there is really only one other verbal formula that has been offered and that is reasonable certainty of no harm. And that formulation has its own problems. If there could be a different, a third one, I think it would be worthy of discussion.

The unreasonable risk language has been interpreted primarily by courts as requiring a cost-benefit analysis. Since the safety determination itself is a science-oriented, risk-based analysis, cost doesn't seem to make sense in that context. Cost considerations make sense in the context of

making risk management decisions. One suggestion I would make would be to ensure that legislative history clarifies the intent of Congress that costs and benefits not be waived in making a safety determination. The kind of legislative history together with the statutory text would go a long way to keeping the courts from going in the direction of finding cost benefit required in the safety determination.

Mr. {Tonko.} Thank you. And I believe my time is more than expired. I yield back.

Mr. {Shimkus.} The gentleman yields back his time. The chair now recognizes Mr. Harper from Mississippi for 5 minutes.

Mr. {Harper.} Thank you, Mr. Chairman. Mr. Stem, if I may ask you a few questions, in your written testimony you note the importance of EPA being required to systematically evaluate all chemicals in commerce including TSCA's grandfathered chemicals. Why is that important?

Mr. {Stem.} Because science changes. We develop new information. Chemicals that have been grandfathered that might be new information on that. If there is no new information, there is no science change in the chemicals and it is a process that would benefit the people.

Mr. {Harper.} CICA requires prioritization of chemicals in order for EPA to make safety determinations. Why is this

important in a reformed TSCA and how does the CICA address it?

Mr. {Stem.} Well, it doesn't adequately address it. The concept, in answer to your question, is that the EPA should be given the authority to require the company that is manufacturing the chemical to do most of the initial testing to present that when they present the product and ask for commercial use. CICA does not adequately do that.

Mr. {Harper.} All right. So what would be your recommendation then?

Mr. {Stem.} That EPA require that, that the EPA not have to start testing the product.

Mr. {Harper.} Okay.

Mr. {Stem.} The manufacturer of the product should conduct valid scientific testing and produce that testing when they present the product to EPA asking for commercial use.

Mr. {Harper.} You note in your written testimony that if necessary, CICA allows EPA to reclassify a low-priority chemical as high priority. Why is this important?

Mr. {Stem.} Basically because of reevaluation of the science involved and the potential use or mixture of the original chemical that was classified at one time as a low priority.

Mr. {Harper.} Mr. Chairman, I yield back.

Mr. {Tonko.} Just one item of business, Mr. Chair. Would you entertain a request for a unanimous consent?

Mr. {Shimkus.} I would.

Mr. {Tonko.} I request unanimous consent to enter 38 letters into the hearing record. These letters have come in from across the country and represent the views of groups in the public health, environmental, labor, scientific and small business communities. All express the need for TSCA reform and concerns with this current draft. Letters have been shared with your staff. I also request unanimous consent to enter into the record the statement of our fellow Energy and Commerce member, Representative Bobby Rush.

Mr. {Shimkus.} Without objection, so ordered.

[The information follows:]

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Mr. {Shimkus.} It was asked during the hearing by Mr. Cik and you asked if we could submit that pediatrician document. We would like to see it first, and having seen it, then we will accept it. But that is a follow-up just from the hearing, if we can do that. I guess I have a unanimous consent request also for this letter with a bazillion people in support of the legislation.

Mr. {Tonko.} How many zeroes in bazillion?

Mr. {Shimkus.} I hope it has been shared with your staff. They couldn't carry it in there were so many. But without objection, so ordered.

[The information follows:]

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Mr. {Shimkus.} We want to thank you all for coming. We know we have a long way to go. So we are going to continue to work. We believe there will be another legislative hearing on the draft. It may be an adjusted draft based upon the consultations we are having. We do want to encourage all stakeholders to continue to work with us. Because of the diversity of opinion, we are not going to get everybody 100 percent on board. Even those who will despise the legislation, we want them to despise it with a smile that we made a good effort and attempt to move forward.

So with that, I appreciate your patience, and the hearing is now adjourned.

[Whereupon, at 1:04 p.m., the Subcommittee was adjourned.]